United States Court of Appeals for the Second Circuit



APPENDIX

74-2384, 75-4001

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United States Court of Appeals

FOR THE SECOND CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Respondent.

On Application for Enforcement of an Order of The National Labor Relations Board

APPENDIX



ELLIOTT MOORE, Deputy Associate General Counsel,

National Labor Relations Board. Washington, D.C. 20570 PAGINATION AS IN ORIGINAL COPY

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APPENDIX

UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES WASHINGTON, D. C.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

and

J. R. STEVENSON CORP.

: Case No. 2-CB-5412

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

In the matter of: Local 456, International
Brotherhood of Teamsters, Chauffeurs,
Warehousemen and Helpers of America,

Case No. 2-CB-5412

1973	
7. 9.73	Charge filed
9.28.73	Complaint and Notice of Hearing, dated
10. 5.73	Respondent's Answer, dated
10. 5.73	Respondent's Letter requesting rescheduling, dated
10.15.73	Order Rescheduling Hearing, dated
11. 5.73	Charging Party's Letter requesting rescheduling, dated
11. 5.73	Order Rescheduling Hearing, dated
11.28.73	Hearing opened
11 20 73	Hearing closed

- 12.21.73 Respondent's telegram requesting Extension of Time to File Brief, Gated
- 12.26.73 Administrative Law Judge's Telegram granting Extension of time, dated
- 12.27.73 General Counsel's telegram opposing Respondent's request for extension of time, received
- 1.17.74 Administrative Law Judge's Decision, issued
- 3. 1.74 Respondent's letter requesting oral argument before the Board, dated (Denied, See footnote¹ of Board's Decision and Order).
- 3. 4.74 Respondent's Exceptions To Findings of Fact, received
- 3.28.74 Charging Party's Cross-Exceptions To Administrative Law Judge's Decision and Order, received
- 8.22.74 Copy of Decision and Order, issued

[Dated January 17, 1974]

DECISION

Statement of the Case

BERNARD J. SEFF, Administrative Law Judge: Based upon a charge filed on July 9, 1973 by J. R. Stevenson Corp. herein called the Company, the General Counsel of the National Labor Relations Board by the Regional Director for the Second Region issued a Complaint on September 28 alleging that Local 456 International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America established a picket line around the jobsite upon which the Company was then engaged demanding as the price for removing the picket line that Respondent sign a contract with the Union and employ

¹ All dates referred to in this case took place in 1973 unless otherwise indicated.

one man. The Company capitulated to this demand, signed a contract with the Union and put a teamster man on its payroll. Respondent denied the commission of any unfair labor practices but did admit it was a labor union within the meaning of the Act. The case came on for hearing before me in New York on November 28 and 29.

Upon the entire record in this case and my observation of the witnesses.

I hereby make the following:

Findings of Fact

Jurisdiction

The Company is a general contractor presently engaged in the construction of a courthouse complex located in White Plains, New York. During the past year it purchased and caused to be delivered to the construction site lumber and other goods and materials valued in excess of \$1,000,000,000 of which goods and materials valued in excess of \$1,000,000,000 were transported and delivered to the courthouse complex in interstate commerce directly from states in the United States other than the State of New York. The Company is and has been at all times an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. The Facts Concerning the 8(b)(6) Allegations

The charging party, the J.R. Stevenson Company, had been a member of the Building Trades Employers Association of Westchester (hereinafter referred to as the BTEA) for many years. BTEA has had labor agreements with numerous trade unions in Westchester County but had no agreement with Local 456. Stevenson employed no teamster members and has no use for the skills

of a member of the Teamsters Union. Despite these facts Local 456 approached Stevenson and demanded that it sign a contract with Local 456. Stevenson refused. Local 456 threw a picket line around the jobsite and succeeded in shutting down the operation.

The Company capitulated and signed a contract with Local 456. One of the provisions of this agreement required the Company to provide a heated trailer equipped with a telephone and placed on its payroll a member of Local 456. The teamster member, who is a shop steward, performed no work of any kind for Stevenson but merely checked the trucks which came on the property to see if the drivers carried teamster cards.

Originally in May 1970 Stevenson hired Victor Torman who is a teamster member. On one occasion Toran was asked by Stevenson to drive a pick-up truck. He refused this assignment and suggested that if Stevenson needed a truckdriver it should hire another teamster to perform that service. Faced with this refusal the Company dropped the matter and did not pursue it any further.

Upon Toran's retirement he was replaced by Arpad Korchma who assumed his duties as shop steward and enjoyed the same privileges of a heated trailer and telephone as had been previously been granted to his predecessor. Korchma received approximately \$20,000 a year for which he performed no services for Stevenson.

A second contract was executed between the parties covering the period from July 1, 1970 to June 30, 1973. Respondent requested some changes in this agreement. Stevenson replied by notifying Respondent that it employed no teamsters in its operations, refused to enter into another contract and terminated Korchma. Korchma picketed the jobsite. Once again Stevenon agreed to a new collective bargaining agreement and rehired Korchma. Korchma performed no useful services for the Company and again received approximately \$20,000 per year.

Based on the above facts the sole issue presented was whether Respondent violated Section 8(b)(6) of the Act by requiring Stevenson to employ a member of its labor organization and pay this member for services which are not performed or not to be performed.

It is clear from the testimony in the record that Korchma performed no duties of any kind whatsoever during the entire time that he was paid \$20,000 a year to occupy a heated trailer. On the single occasion when the Company thought it might be able to find a use for the teamster employee and they called upon him to perform the minor job of moving some supplies from one part of the project to another employee Torman refused to do this work and suggested to the Company that it hire another teamster who would perform the duties requested of him.

The dispute in the American Newspaper case arose out of the Union's insistence that certain publisher-employers, with whom it had a long standing collective bargaining relationship, pay their composing room employees for engaging in the practice of setting "bogus type." This so called "made work" had no useful value to the employers and was characterized by the court as a "wasteful procedure." Nevertheless, in finding that the Union's insistance upon continuation of this practice did not find a Section 8(b)(6), the Court, after reviewing the legislative history, stated:

The substitution of the present Section 8(b)(6) for the definition compels the conclusion that Section 8(b)(6) means that the Court below has said it means. The Act now limits its condemnation to instances where a labor organization or its agents exact pay from an employer in return for services not performed or not to be performed. Thus, where work is done by an employee with the employer's consent, a labor organization's demand that the employee be compensated for time spent doing the disputed work does not become an unfair labor practice.

However, the court went on to say:

Section 8(b)(6) leaves to collective bargaining the determination of what, if any work, including bona fide "made work," shall

be included as compensable services and what rate of compensation shall be paid for it.

B. Conclusions Concerning the 8(b)(6) Allegations

The General Counsel called two witnesses both of whom were responsible for the completion of the project at various times. These men testified that Korchma performed no useful services for Stevenson throughout his total period of employment. In sum when Korchma checked on drivers who came on to the project to find out if they had Teamster cards he was performing work for his union. For the performance of this strictly union business the Company was compelled to pay him \$20,000 per year. On the isolated occasion when Toran was asked to drive a pick-up truck he refused to do this work and instead suggested that the employer employ an additional member of the teamster's union. What Korchma did was of no use to the Company.

It is reasonable to assume that Respondent relies on the landmark Supreme Court decisions of American Newspaper Publishers v. N.L.R.B., 345 U.S. 100 and N.L.R.B. v. Gamble Enterprises, Inc., 345 U.S. 117 to support its contention that Respondent did not violate Section 8(b)(6). The General Counsel in his brief states:

The most significant aspect of these cases is the conclusion that in determining whether a union has sough; to perform services, the issue is not whether the work is productive, wanted or needed by the employer. Rather, the test as applied by the Court to date, is whether work is being performed.

However, as caveats to this general principle, the Court carefully set forth the following standards: the offer to work must be for services which are not merely token or nominal, but rather, substantial and competent performances of relevant services which are not the substantial equivalent of standing by, and there must be evidence the union has made these offers in good faith.

The facts in the instant case are not analogous to the American Newspaper or Gamble cases. Very few cases have come up involving Section 8(b) (6) of the Act. In a recent case, Lathers, Local 46 (Expanded Metal Engineering Co., 207 NLRB 111, pressure was applied by the establishment of a picket line by the Union to compel the employer to hire a lather. Despite having no need for one, a fact which it communicated to the local, the employer capitulated and hired the lather. In holding the local union's actions to be unlawful, Administrative Law Judge John Von Rohr distinguishes the Supreme Court decisions in American Newspaper Publishers and Gamble. He points out that the employer had no immedite or prospective need for the services of a lather and therefore the local union's demand did not constitute a "bona fide" offer of the competent performance of "relevant services." Moreover the Union knew that the work for which it was demanding that its member be hired was being performed by a member of another labor organization who belonged to a company recognized bargaining unit. These facts are on all fours with the case at bar.

Finally, I find that by the above described conduct the Respondent caused and attempted to cause Stevenson to pay money or other things of value, in the nature of an exaction, for services not performed in violation of Section 8(b)(6) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent-Union set forth in section III, above, occurring in connection with the operations of the employer described in section I. above, have a close, intimate, and substantial relationship to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in unfair labor practices violative of Section 8(b)(6) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

In view of the flagrant nature and extent of the unfair labor practices committed, I shall recommend that Respondent-Union be required to reimburse the Stevenson Corp. for the monetary loss suffered by it due to the unlawful Section 8(b)(6) conduct herein found.

Conclusions of Law

- 1. J.R. Stevenson Corp., is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
- 2. Local 456, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
- 3. By threatening, restraining and coercing the J.R. Stevenson Corp., by virtue of the picket line established by the Respondent Union, and threatening the Company that it would engage in the foregoing activity unless Respondent put on its payroll a member of the Local 456 thus causing the Stevenson Corp. to deliver money or other things of value, in the nature of an exaction, for services not performed in violation of Section 8(b)(6) of the Act, the Respondent Union violated the National Labor Relations Act.
- 4. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby make the following recommended:²

² In the event no exceptions are filed to this Recommended Order as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

ORDER

Local 456, International Brotherhood of Teamsters, Chauffeurs, Ware-housemen and Helpers of America, its officers, agents, successors and assigns shall:

- 1. Cease and desist from:
- (a) Coercing or threatening J.R. Stevenson Corp. where an object is to cause the Company to pay or deliver or agree to pay or deliver money or other things of value, in the nature of an exaction, for services not performed or not to be performed.
- 2. Take the following affirmative action which it is found will effectuate the policies of the Act:
- (a) Post at its offices, meeting halls and hiring halls copies of the attached notice marked "Appendix." Copies of said notice on forms provided by the Regional Director for Region 2, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced or covered by any other material.
- (b) Reimburse the J.R. Stevenson Corp., with interest at 6 percent per annum for all wages paid to Arpad Korchma for services not performed by him for the period not barred by Section 10(b) of the Act.
- (c) Additional copies of the Appendix shall be signed by the representative of the Respondent-Union and forthwith returned to the Regional

³ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

Director for Region 2. These notices shall be posted, J.R. Stevenson Corp. willing at all places where notices to its employees are customarily posted.

(d) Notify the Regional Director for Region 2, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C., January 17, 1974.

/s/ Bernard J. Seff
Bernard J. Seff
Administrative Law Judge

[Appendix]

(SEAL)

NOTICE TO MEMBERS

Posted by Order of the NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT threaten, restrain or coerce the J. R. STEVENSON CORP. where in object is to cause or attempt to cause J.R. STEVENSON CORP. to pay or deliver or agree to pay or deliver money or other things of value in the nature of an exaction, for services not performed or not to be performed.

WE WILL reimburse the J.R. STEVENSON CORP. for the payment of services which were not performed by Arpad Korchman.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated	i	By		
		(Representative)	(Title)	

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor Federal Building, 26 Federal Plaza, New York, New York 10001 (Tel. No. 212-264-0306).

[Dated August 22, 1974]

DECISION AND ORDER

On January 17, 1974, Administrative Law Judge Bernard J. Seff issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions to the Administrative Law Judge's Decision with supporting arguments; the Charging Party filed cross-exceptions and an answering brief; and the General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions, arguments, and briefs, and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge to the extent consistent herewith, and to adopt his recommended Order, as modified herein.

For the reasons discussed below, we find that Respondent violated Section 8(b)(6) of the Act by forcing Stevenson, since on or about July 1, 1973, to hire Arpad Korchma and to pay him moneys for services which Stevenson did not need and which Korchma did not perform or offer, in good faith, to perform.

I. Background

Stevenson is a general contractor engaged in the construction of a \$21 million county courthouse complex in White Plains, New York. Work on the

¹ Respondent's request for oral argument is hereby denied as, in our view, the record, exceptions, arguments, and briefs adequately present the positions of the parties.

² In Conclusion of Law 3, the Administrative Law Judge inadvertently referred to "Respondent" although such reference was clearly intended to be to Stevenson. We hereby correct the error by substituting "Stevenson" for "Respondent."

project began in March 1970 with an expected completion date of December 31, 1973. On May 21, 1970, Stevenon signed a contract with Respondent which, by its terms, expired on June 30, 1970. Thereafter, the parties entered into another agreement extending from July 1, 1970, to June 30, 1973. Each of these contracts contained a recognition clause covering employees engaged in a variety of intrasite and intersite driving duties. In addition, article XIX provided, in relevant part:

- On outside construction job sites, the employer shall provide a heated trailer with telephone for employees covered hereby.
- 3. A shop steward shall be assigned to each supply yard and each road- and building-construction job site at all times, and shall be furnished with a vehicle for means of transportation. If an employer has more than one such job site in operation, a shop steward may cover all of such job sites.

Pursuant to its first collective-bargaining agreement with Respondent, Stevenson hired Victor Toran, a member of Respondent, in May 1970 and, under the contract's terms, paid him about \$20,000 per year and furnished him a heated trailer with telephone. According to credited testimony, Toran spent his working time in the heated trailer or, when outside, checking incoming trucks to see if the drivers carried Teamsters cards. Otherwise, he performed virtually no services for Stevenson. Once during his employment, he was asked by Stevenson to drive a truck. He refused to do so, and suggested that if Stevenson needed a driver, it should hire another teamster to perform that service. The matter was not pursued further. Toran continued in Stevenson's employ until January 1972 when he retired. He was then replaced by Arpad Korchna who assumed his duties as shop steward, and enjoyed the same privileges of a heated trailer and telephone as had Toran. Stevenson presented

evidence indicating that, in addition to the salary it paid Korchma, it paid approximately \$100 per month for Korchma's use of the trailer telephone.

In April 1973,³ Respondent notified Stevenson of its desire to negotiate a new agreement to succeed the one expiring on June 30. By letter, dated June 27, Stevenson replied that it did not employ teamsters in its operation and that it therefore had no need to enter into another agreement. On June 29, Stevenson notified Arpad Korchma, the Teamsters shop steward then in its employ, that he would be terminated on June 30.

On July 3, Korchma and others appeared at the jobsite with picket signs. Respondent picketed Stevenson on July 3, 5, 6, and 9. On July 9, the same date on which it filed the instant charge, Stevenson agreed to sign a new agreement with Respondent and, upon signing such agreement, 4 Stevenson rehired Korchma on July 10. Since July 10, Korchma has performed no services for Stevenson which could be termed relevant or productive. Instead, he has devoted his time to checking drivers entering the jobsite to see if they carried Teamsters cards. Pursuant to the new agreement, which expires June 30, 1976, Korchma's earnings are at least \$65 per day, with 50-cent-an-hour increases effective July 1, 1974, and July 1, 1975. In addition, Korchma continues to have use of the heated trailer and telephone.

II. The Administrative Law Judge's Decision

The Administrative Law Judge found that Respondent violated Section 8(b)(6) of the Act by forcing Stevenson to hire, and pay moneys to, Arpad Korchma, one of its members, at a time when Respondent knew that Stevenson had no need or use for Korchma's services. The Administrative Law Judge

³ Unless otherwise indicated, all dates are in 1973.

⁴ This contract was identical to the earlier agreements except as to economic terms. In addition, the following language was added to art. XIX, sec. 3:

The shop steward may be assigned to the duties of safety coordinator at the discretion of the Employer and under the direction of the Employer.

further found that Korchma did not perform, or make a bona fide offer to perform, relevant services for Stevenson and recommended that Respondent be ordered to reimburse Stevenson for all wages paid to Korchma for services not performed and not to be performed by Korchma for the period not barred by Section 10(b) of the Act.

III. Contentions of the Parties

Respondent contends that the Administrative Law Judge's findings are not supported by the record, that his reliance on *Metallic Lathers*⁵ is misplaced, and that, in any event, the charge herein is barred by Section 10(b) of the Act.

General Counsel, on the other hand, contends that because Korchma performed no services for Stevenson and was paid approximately \$20,000 for conducting unioi business at Stevenson's premises, his asserted offer to perform work was, at best, for token or nominal services and was therefore not a bona fide offer of the competent performance of relevant services, but was rather the substantial equivalent of standing by. General Counsel further contends, however, that Stevenson, by keeping Korchma on its payroll without complaint until July 1, 1973, is estopped from claiming damages prior to that date.

Charging Party contends that the Administrative Law Judge's proposed remedy should be expanded to include all reasonable expenditures directly incurred in its employment of Korchma including, but not limited to, fringe benefit payments and telephone expenses.

IV. Discussion

In concluding that Respondent violated Section 8(b)(6) of the Act by forcing and requiring Stevenson to hire, and pay moneys to, Arpad Korchma for services not performed and not to be performed by him, the Administrative Law Judge relied exclusively upon his finding, apparently based on credibility

Metallic Lathers Union of New York and Vicinity, Local 46 of the Wood, Wire and Metal Lathers International Union, AFL-CIO (Expanded Metal Engineering Co.), 207 NLRB No. 111 (1973).

resolutions, that Victor Toran had earlier refused to perform any driving duties when requested by Stevenson to do so, suggesting that Stevenson hire another teamster to do the driving. Since Toran's refusal occurred outside the limitations period imposed by Section 10(b) of the Act, we may not rely upon it as the sole basis for finding that Korchma, too, refused to perform relevant driving work within the 10(b) period.⁶ With respect to Korchma's employment history prior to his discharge on June 30 and subsequent rehire on July 10, the evidence is in considerable conflict as to what work, if any, he performed or offered to perform, and the Administrative Law Judge failed to resolve this conflict by making specific credibility resolutions. The Administrative Law Judge's failure in this regard, however, is not fatal because Korchma, too, was initially hired, in January 1972, pursuant to a valid collective-bargaining agreement entered into between Stevenson and Respondent in 1970; both events are clearly outside the 10(b) limitations period. In these circumstances, we may not presume that the initial hiring of Korchma pursuant to such agreement was other than fair and regular.

The record, however, is clear that on June 27 Stevenson notified Respondent that it did not need the services of a teamster and that it therefore considered it unnecessary to negotiate a new contract with Respondent. And, upon expiration of its then current agreement with Respondent on June 30, Stevenson terminated Korchma's employment. There is no allegation that the discharge of Korchma violated Section 8(a)(3) of the Act. Rather, the record as a whole supports Respondent's assertion that, as of June 30, Stevenson had no need for Korchma's services and, indeed, there is no evidence whatever in the record that Korchma thereafter offered to perform or performed relevant services for Stevenson.

⁶ Local Lodge No. 1424. International Association of Machinists, AFL-CIO [Bryan Manufacturing Co.] v. N.L.R.B., 362 U.S. 411, 416 (1960).

Section 8(b)(6) of the Act forbids a labor organization "to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed." The Supreme Court narrowly construed the provisions of Section 8(b)(6) in American Newspaper Publishers Association 7 and Gamble.8

In American Newspaper Publishers Association. the Supreme Court was faed with the question of whether a union's demand that printers be paid for setting bogus type for which the publishers had no use violated Section 8(b)(6). The Board had dismissed the charge⁹ and the Seventh Circuit upheld the Board's dismissal. The Supreme Court affirmed the circuit court's decision and held that although the setting of bogus type was a "wasteful procedure," the practice called for payment only for work which was done by employees of publishers in the course of their employment as distinguished from payment "for services which are not performed or not to be performed." Because setting bogus type was a service performed it remained for the parties to determine its worth to the employer. The Court found it unnecessary to pass upon the Board's contention that the union's insistence on payment was "not in the nature of an exaction." The Court observed that:

The Act now limits its condemnation to instances where a labor organization or its agents exact pay from an employer in return for services not performed or not to be performed. Thus, where work is done by an employee, with the employer's consent, a labor organization's demand that the employee be compensated for time spent in doing the disputed

⁷ American Newspaper Publishers Association v. N.L.R.B., 345 U.S. 100 (1953).

⁸ N.L.R.B. v. Gamble Enterprises, Inc., 345 U.S. 117 (1953).

⁹ 86 NLRB 951 (1950).

^{10 193} F.2d 782 (C.A. 7, 1951).

work does not become an unfair labor practice. The transaction simply does not fall within the kind of featherbedding defined in the statute. In the absence of proof to the contrary, the employee's compensation reflects his entire relationship with his employer. ¹¹

The Court so concluded by examining the legislative history behind Section 8(b)(6) and in particular Senator Taft's observation that the clause, substituted by the Conference Committee for the extensive provisions in the House Bill concerning "featherbedding," which became the present Section 8(b)(6), "makes it an unlawful-labor practice for a union to accept money for people who do not work." The Court found that Section 8(b)(6) left to collective bargaining "the determination of what, if any, work, including bona fide 'made work,' shall be included as compensable services and what rate of compensation shall be paid for it." 13

In *Gamble* the issue presented to the Court was whether a union violated Section 8(b)(6) when it insisted that a theater, which was part of an interstate chain, employ a local orchestra to play in connection with certain programs, although the theater did not need or want to employ the local orchestra. The union demand that the local orchestra be hired to play "overtures, intermissions and chasers." Again the Board had dismissed the 8(b)(6) complaint ¹⁴ but the Sixth Circuit set aside the Board's dismissal. The Supreme Court reversed the judgment of the Sixth Circuit and accepted the Board's finding that the union sought actual employment for its members as opposed to mere standby pay. Because the Court agreed with the Board's treatment of the union's

^{11 345} U.S. at 110.

¹² Id. at 108-109.

¹³ Id. at 111.

¹⁴ 93 NLRB 1528 (1951).

^{15 196} F.2d 61 (C.A. 6, 1952).

proposals as made "in good faith contemplating the performance of actual services," the Court concluded that the union had not violated Section 8(b)(6).

The Court observed:

We are not dealing here with offers of mere "token" or nominal services. The proposals before us were appropriately treated by the Board as offers in good faith of substantial performances by competent musicians. There is no reason to think that sham can be substituted for substance under § 8 (b)(6) any more than under any other statute. Payments for "standing-by," or for the substantial equivalent of "standing-by," are not payments for services performed, but when an employer receives a bona fide offer of competent performance of relevant services, it remains for the employer, through free and fair negotiation, to determine whether such offer shall be accepted and what compensation shall be paid for the work done. 16

It cannot be gainsaid that in both cases the Supreme Court used as a touchstone for its construction of Section 8(b)(6) the fact that work was performed. In both cases before the Court, work had been done even though the employer in each case had no use for the work. As noted above, *American Newspaper Publishers Association* made specific reference to "work" done by an employee. In *Gamble* the Court noted Senator Ball's comment that Section 8(b)(6) proscribes payment only where *no work is done*. ¹⁷ Even the

^{16 345} U.S. 117, 123-124.

¹⁷ Id. at fn. 5. Of course, Sec. 8(b)(6) does not proscribe all payments made when employees are not "working." See *American Newspaper Publishers Association*, 345 U.S. at 111, fn. 10:

Section 8(b)(6) does not relate to union requests for, or insistence upon, such types of payments as employees' wages during lunch, rest, waiting or vacation periods; payments for service on relief squads; or payments for reporting for duty to determine whether work is to be done. Such practices are recognized to be incidental to the employee's general employment and are given consideration in fixing the rate of pay for it. They are not in the nature of exactions of pay for something not perofrmed or not to be performed. See 93 Cong. Rec. 6859.

various dissenting opinions in the two cases conceded that work had been done. 18

A panel of the Board, in adopting the Decision of an Administrative Law Judge, recently found a violation of Section 8(b)(6) in Metallic Lathers Local 46, supra. In that case the employer, Special Sections, although principally a distributor, was also engaged in the manufacture of furring channels. The manufacturing process was performed by a unit employee represented by Teamsters Local 810. The Lathers demanded that Special Sections hire a lather to do the manufacturing work. Although having no need for a lather and having communicated this fact to Lather Local 46, Special Sections, in the face of picketing, hired a lather who subsequently performed no lathing duties. During the lather's tenure he worked on several jobs, some of which he characterized as demeaning. The Administrative Law Judge found a violation of Section 8(b)(6) because the employer did not have "even a prospective need for the specialized services of a lather" and Local 46's demand that the employer hire a lather was not a bona fide offer of competent performance of relevant services. Moreover, there was in absence of any collective-bargaining history between Special Sections and Local 46 and the work claimed for Local 46's member infringed on the unit work of the company-recognized bargaining agent, Teamsters Local 810.

¹⁸ Justice Clark, with whom Chief Justice Vinson joined, admitted that in both cases work had been performed, 345 U.S. 117, 126, but believed that Sec. 8(b)(6) proscribed contrived and patently useless job operations not to the employer's benefit, 345 U.S. 100, 115. Justice Douglas thought the work in American Newspaper Publishers Association was unwanted and wholly useless and in no sense a "service" to the employer and so prohibited by Sec. 8(b)(6), 345 U.S. 100, 112. He did not believe, however, the work in Gamble was useless. Justice Jackson viewed both cases as involving payment for useless and unwanted work caused by the respective unions. He considered the practice of setting bogus type as a fair adjustment of service conditions recognized by long and voluntary usage while the Musicians Union in Gamble had "substituted for the practice specifically condemned by the statute a new device for achieving the same result." 345 U.S. 117, 125.

We believe the facts and the holdings in Gamble and American Newspaper Publishers Association to be distinguishable from the facts and the issues before us. Stevenson indicated it had no use for the services of a teamster. The uncontradicted testimony reveals that since July 1, 1973, Korchma has not performed any teamster duties and Stevenson has had neither a need nor a desire for him to perform any. Respondent, well knowing that these were the facts, nevertheless demanded that Stevenson pay to Korchma's unwanted and unneeded daily presence when there was no contemplation of his performing any bona fide relevant services. As of July 1, 1973, Stevenson did not have "even a prospective need for the specialized services" of a teamster. Respondent's demand for a new contract calling for payments for the presence of one of its members at the jobsite when no teamster work was being performed and where the Employer indicated it had no need for teamster labor, coupled with a strike to make the Employer respond to such a demand, is an exaction within the meaning of Section 8(b)(6). Respondent's demand falls considerably short of being a bona fide offer of the competent performance of relevant services. Both American Newspaper Publishers Association and Gamble make it clear that "relevant services" must be contemplated for a labor organization's demand for pay to its members to escape the sanctions of Section 8(b)(6). Here all parties - including Respondent - knew perfectly well that Korchma simply performed no work - made work or otherwise - for Stevenson. Although he may have checked union cards in his capacity as shop steward, such work was done solely as an agent of Respondent and was for Respondent's benefit; it surely was not even remotely related to Stevenson's work requirements. Accordingly, we agree with the Administrative Law Judge's determination that Respondent violated Section 8(b)(6) of the Act.

Having found that Respondent violated Section 8(b)(6) of the Act as of July 1, 1973, we shall order Respondent to reimburse Stevenson for wages paid as of that date and thereafter. In addition, because of the nature of

Respondent's violation we find merit in Charging Party's contention that, in order to restore the status quo and thus provide a full remedy herein, it should be reimbursed for all reasonable expenditures directly incurred in its employment of Arpad Korchma. We shall, however, leave to the compliance stage of the proceeding herein the determination of the amounts due Stevenson for these expenses. Accordingly, we shall amend the recommended Order to reflect these changes.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that Respondent, Local 456, International Brotherhood of Teamsters, Chaueffeurs, Warehousemen and Helpers of America, New York, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, as so modified:

- 1. Substitute the following for paragraph 2(b) of the recommended Order:
- "(b) Reimburse the J.R. Stevenson Corp., with interest at 6 percent per annum, for all wages paid to, and all reasonable expenditures directly incurred in the employment of, Arpad Korchma for services not performed by him for the period commencing July 1, 1973."
- Substitute the Attached notice for that of the Administrative Law Judge.

Dated, Washington, D.C., August 22, 1974.

Edward B. Miller,	Chairman	
Ralph E. Kennedy,	Member	
John A. Penello,	Member	
NATIONAL LABOR RELA	TIONS BOARD	

(SEAL)

[Appendix]

NOTICE TO MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT threaten, restrain, or coerce the J.R. Stevenson Corp. where an object is to cause or attempt to cause J.R. Stevenson Corp. to pay or deliver or agree to pay or deliver money or other things of value in the nature of an exaction, for services not performed or not to be performed.

WE WILL reimburse the J.R. Stevenson Corp., with interest at 6 percent per annum, for all wages paid to, and all reasonable expenditures directly incurred in the employment of, Arpad Korchma for services not performed by him for the period commencing July 1, 1973.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

(Labor Organization)

Dated	Ву			
		(Representative)	(Title)	

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 36th Floor, Federal Building, 26 Federal Plaza, New York, New York 10007, Telephone 212-264-0306.

GENERAL COUNSEL'S EXHIBIT NO. 2

* NATIONAL LABOR	RELATIONS BOARD
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AGREEMENT made as of the first day of July, 1970, by

and between

hereinafter termed the EMPLOYER, and LOCAL 456, TEAMSTERS and CHAUFFEURS UNION, affiliated with the International Brotherhood of Teamsters. Chauffeurs, Warehousemen and Helpers of America, hereinafter termed the UNION.

The Parties hereto agree as follows:

ARTICLE I - UNION RECOGNITION:

1. The Employer hereby recognizes the Union as the sole and exclusive collective bargaining agent for employees employed by the Employer in its present establishments or those hereafter opened by the Employer in Westchester or Putnam Counties for employees in the following classifications:

Chauffeurs on straight trucks, trailer tractors (all types) 3-axle trucks (physically load and unload) Euclids, A & T Trailer Wagons, mixer men (asphalt plants and cement hopper men, including employees who weigh ingredients) yardmen and helpers, asphalt and concrete plants (both portable and stationary, high pressure boiler operators in asphalt and batch plants (either portable or stationary, pick-up trucks, dynamite trucks, agitator trucks, central mixing plants (manual or automated), weighmasters, maintenance personnel of asphalt and concrete plants (portable or stationary), operators of block plants, roller trucks A-frame trucks operated from inside the cab, winch trucks, operated from inside the cab, operators of tow trucks, dual purpose grease and fuel trucks, fuel trucks, operators of stone crushers and maintenance of such equipment, operators of seeding and mulching trucks, water trucks, lift trucks in garages, yards and job sites, belly dunpers, tire trucks, welding trucks on pipelines, drivers of post-hole diggers, mortar mixing trucks, suburbans (when carrying materials and/or power tools to, from and on the job site), operators of oil distributor trucks, operators of towing and towed equipment, operators of scrapers and turnapulls, which are loaded by shovel or bucket, operators of vehicles moving crones, shovels, cats, etc., snowplows (whether jeep, suburban, pick-up or other type of vehicle), maintenance personnel in all batch plants, asphalt plants and crushers, helicopter operators, and employees in each and every classification now represented by the Union.

- All employees in such classification shall become and remain, members of the Union as a condition of continued employment thirty (30) days after the execution of this agreement.
- 3. All new employees shall, as a condition of continued employment, become members of the Union thirty (30) days after the date of their initial employment, and remain members thereof throughout the term of this agreement.

- 4. The Employer shall notify the Union, in the event the Employer needs additional help, and the Union shall refer applicants without discrimination as to their membership or non-membership in the Union; and the Employer shall have the right to determine which of the said persons referred by the Union shall be employed.
- 5. In making such referral or selection, the parties shall give due consideration to prior experience of the applicant in the industry, together with the applicant's competence to perform the work.

ARTICLE II - WAGES:

1. The following minimum scale of wages shall be paid by the Employer:

	Effective	Effective
	July 1, 197	O July 1, 1971
	(Per Day)	(Per Day)
Classifications:	,	, , , , , , , , , , , , , , , , , , , ,
Chauffeurs:		
Straight jobs	. \$50.60	\$58.60
Tractor Trailers (all types)	. 51.60	59.60
Tractor Trailers (carrying equipment)	. 52.60	60.60
3-Axle Trucks (physically load and unload)	. 51.60	59.60
Euclid	. 53.60	61.60
-Euclid (over 40 tons)	. 58.60	66.60
-Athey Wagons (over 40 tons)	. 58.60	66.60
-Trailer Wagons (over 40 tons)	. 58.60	66.60
-Belly Dumps (over 40 tons)	. 58.60	66.60
Athey Wagons, Trailer Wagons and		
Belly Dumps (under 40 tons)	. 56.60	64.60
-A-Frame Trucks (inside cab)	. 50.60	58.60
-Winch Trucks (inside cab)	. 50.60	58.60
(. 50.00	30.00
Tow Trucks	. 50.60	58.60
Dynamite Trucks	. 50.60	58.60
Seeding Trucks	. 50.60	58.60
Dual Purpose Grease & Fuel Trucks	. 54.20	62.20
Fuel Trucks	. 54.20	
Mulching Trucks	. 50.60	62.20
Agitator Trucks	. 50.60	58.60
Water Trucks	. 50.60	58.60
Tire Trucks	. 50.60	58.60
Welding Trucks on Disalines	. 54.20	62.20
Welding Trucks on Pipelines	. 50.60	58.60
*Darts (up to 100 tons)	. 62.60	70.60
RXS	. 65.60	73.60
Post Hole Diggers	. 50.60	58.60
Nortar Mixing Trucks	. 50.60	58.60
Concrete Wixer Trucks	. 50.60	58.60
Suburbans	. 50.60	58.60
Oil Distributor Trucks	. 50.60	58.60
Pick-Up Trucks	. 50.60	58.60
Hopper Men	. 50.60	58.60
Mixer Men (asphalt plant and cement hopper		
men - one who weighs ingredients and in		
manual or automated central mixing plants)	. 51.60	59.60

	Effective July 1, 1970 (Per Day)	Effective July 1, 1971 (Per Day)
Weighmoster	\$52.60	\$60.60
batch plants	. 51.60	59.60
Welders	. 52.40	60.40
Maintenance Men	52.40	60.40
Helicopter Operator	130.40	138.40
Mechanics	52.40	60.40
Mechanics Helpers	50.00	58.00
Stock Room Men	. 50.00	58.00
Working Foremen in Garage	. 55.80	63.80
Crusher Operators	50.60	58.60
Lift Trucks (in garage, yards and		
on job sitc)	50.60	58.60
Yardmen and Helpers	48.60	56.60

The rates set forth in the column headed "Effective July 1, 1971" shall be increased by \$1.25 per hour, effective July 1, 1972, or by such lesser amount, if any portion of the \$1.25 hourly increase is allocated to the pension, welfare or severance funds by the Union.

- 2. The shop steward in each yard shall be paid a rate equal to the highest rate of pay of any employee in such yard working under the provisions of this contract.
- 3. In the event a lower paid employee is assigned to a position in a higher scale, such employee shall be paid at the higher rate for a full day in which he performed such work, irrespective of the number of hours he actually works. In no event shall an employee receive less than the wage provided for his classification.
- 4. Employees who work a second shift, shall receive 10% above the basic rate.
- 5. Employees who work a third shift, shall receive 15% above the basic rate.
- 6. If an employee is laid off, he shall be paid wages and other benefits in full, not later than the first pay period following the layoff.
- 7. Whenever an employee covered hereby shall be assigned to the same work operation with an employee represented by the Engineer's Union at the same job or plant site, he shall receive the same rate of pay for such work as the employee represented by the Engineer's Union receives, or the rate provided herein, whichever is greater.

ARTICLE III - HOURS OF WORK AND OVERTIME:

1. (a) The normal work wack of all employees shall consist of forty (40) hours, eight (8) hours per day, five (5) days per week, Monday to Friday.

- (b) The work day shall start at 7:00, 7:30 or 8:00 a.m. The Employer shall post the starting time not later than 4:15 p.m., on Friday of the preceding week. An employee's starting time shall be uniform throughout the week. An employee who is not assigned to work after reporting therefor, shall be paid two (2) hours' pay, and, if requested to wait for the Employer, shall wait for two (2) hours computed from the time he was instructed to report. The day for which an employee receives reporting pay shall be counted to determine vacation credits.
 - (c) Any employee who shall start work later than the posted starting time through no fault of his own, shall notwithstanding, have his time computed from the posted starting time.
 - 2. A lunch period of thirty (30) minutes shall be granted to the employees.
 - 3. Employees assigned to work on any day shall receive not less than eight (8) hours' pay.
 - 4. Employees shall be paid at the rate of one and one-half ($1\ 1/2$) times the straight-time hourly rate of pay for all work performed for the following:
 - (a) work before the scheduled starting time or after the scheduled finishing time.
 - (b) work in excess of eight (8) hours per day or forty (40) hours per week.
 - (c) work performed on Saturdays.
 - 5. In the event an employee is assigned to work before the scheduled starting time, he shall nevertheless be afforded work or paid for not less than eight (8) hours, computed from the scheduled starting time hereinabove specified.

Employees in the Classifications of mechanic, plant man and yardman, having at least ninety (90) days of employment, shall be guaranteed forty (40) hours of work each week. This guarantee shall not apply for the first week of the season, after layoff, nor for emergency conditions such as snow-removal, or to receive deliveries during the off-season. Yardmen covered by this guarantee shall be required to perform non-mechanic duties in the garage, if required to by the Employer.

ARTICLE IV - SUNDAYS AND HOLIDAYS:

1. Employees who work two (2) days in the calendar week (a reporting day shall be deemed a day of work, so as to qualify for holiday pay, however, an employee must work at least one (1) day), in which any of the following holidays occur shall be paid for the holiday at straight-time rate of pay without working:

NEW YEAR'S DAY
LINCOLN'S BIRTHDAY
WASHINGTON'S BIRTHDAY
GOOD FRIDAY
DECORATION DAY
INDEPENDENCE DAY

LABOR DAY
COLUMBUS DAY
ELECTION DAY
VETERAN'S DAY
THANKSGIVING
CHRISTMAS DAY

28 2. The Employer shall not lay off an employee for the purpose of avoiding a paid holiday. Holidays shall be paid for irrespective of the day they may occur. 3. All work performed on a holiday shall be paid at the rate of triple time, which includes holiday pay. When a holiday or holidays fall during an employee's vacation, he shall be granted an additional number of days off with pay. 4. Work performed on Sundays shall be paid for at twice the straight-time hourly rate of pay. 5. An employee who has worked for the Employer for at least ninety (90) days, if laid off, shall be paid for any holiday occurring within a period of seven (7) calendar days of his layoff. ARTICLE V - VACATIONS: 1. Employees shall receive vacations with pay, in accordance with the following schedule: (a) Four (4) weeks after twenty (20) years of seniority service. Three (3) weeks after ten (10) years of seniority service. Three (3) weeks and one (1) day after sixteen (16) years of seniority service. Three (3) weeks and two (2) days after seventeen (17) years of seniority service. Three (3) weeks and three (3) days after eighteen (18) years of seniority service. Three (3) weeks and four (4) days after nineteen (19) years of seniority service. The third (3rd) week and every additional day shall be granted to an employee in the calendar year in which he completes his tenth (10th) or other years of seniority service. (b) Two (2) vecks after one hundred and thirty (130) days of employment in a calendar year. However, an employee with five (5) years of seniority service shall receive two (2) weeks' paid vacation, provided he works ninety (90) days in a calendar year. (c) One (1) week after ninety (90) days of employment in a calendar year. Employees who receive one (1) week of vacation shall receive one (1) additional day for each additional eighteen (18) days of employment, not exceeding ten (10) days, in any one calendar year. (d) A casual employee shall be granted one (1) day's paid vacation for each eighteen (18) days of employment. An employee who does not qualify for vacation shall be paid prorata on a daily basis. 2. Employment with prodocessors in interest shall be computed to determine vacation benefits.

- 3. Employees shall be paid for vacations in advance, and those entitled to more than one (1) week shall be granted consecutive weeks.
- 4. Holidays shall be counted as days worked for vacation benefits. Employees shall select vacations in accordance with their seniority. Time for vacations shall be mutually agreed upon between the Employer and the Union. For each day that an employee reports for work and receives reporting pay, he shall receive credit of one (1) day's employment for purposes of determining vacation eligibility.
- 5. An employee having at least ten (10) years of service who becomes disabled and is unable to work, shall receive vacation pay for the period of one (1) year following such disability.

ARTICLE VI - LAYOFF AND REINSTATEMENT:

- 1. Seniority shall be in accordance with classifications. The Union and the Employer have prepared a list containing the seniority standing of the employees. In the event a layoff shall become necessary, the employee with the least seniority shall be the first laid off. Rehiring shall be accomplished in inverse order of layoff. However, notwithstanding the above, the shop steward shall be the last employee laid off and the first one rehired.
- Seniority shall not be deemed breached if an employee is rehired within one (1) year after his layoff.
- Senior employées shall be given first preference for overtime work.

ARTICLE VII - EXTRA EQUIFMENT:

1. In the event the Employer hires additional equipment from employers not under contract with the Union, his employees shall operate such equipment if they are not otherwise assigned to work, but, in any event, such hired equipment shall be operated by an employee in accordance with the provisions of this agreement.

ARTICLE VIII - INDIVIDUAL CONTRACTS:

1. The Employer shall not make any contract with an individual employee, nor shall the employer attempt to enter into such a contract with an employee.

ARTICLE IX - FAST BENEFITS:

1. The Employer shall continue during the term of this agreement any benefit or condition of work more favorable than those contained in this agreement.

ARTICLE X - WELFARE FUND:

1. The Employer shall contribute a sun equal to twenty-five (25c) cents per nour for each nour worked, not exceeding forty (40) hours per week by each employee covered by this agreement to Trustees of the Westchester Teamsters Health and Welfare Fund, heretofore designated by the parties, for the purpose of securing medical and social benefits for employees. In the event, however,

tractor, corporation, partnership, individual or otherwise, except as provided by ARTICLE VII hereof. It is agreed that employees covered by this Agreement shall continue to do all types of work heretofore performed by them. The Employer shall use

employees covered hereby to move cranes, cats or shovels.

ARTICLE XIV - DISCHARGE:

1. The Employer may discharge an employee for just cause. However, the Employer shall discuss his proposed action with a representative of the Union before the discharge becomes effective.

ARTICLE XV - STRUCK WORK:

1. It shall not be a breach of this contract nor cause for discharge or other discipline, for any employee to refuse to cross a picket line.

31 ARTICLE XVI - PENSION: 1. The Employer shall pay monthly the sum equivalent to sixty (60¢) cents per hour for each hour worked by each employee not in excess of forty (40) hours per week, to the Trustees of the Westchester Teamsters Pension Fund. 2. The contributions provided for hereunder shall continue so long as the Pension Fund previously established continues to qualify for approval by the U.S. Internal Revenue Service. 3. The Pension Plan shall provide that employees must retire upon reaching sixty-five (65) years of age. 4. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable by him to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event that the Employer's record of payments -- in the opinion of the Trustees -justifies such consideration. 5. Holidays and vacations shall be considered hours worked for the purpose of this Article. ARTICLE XVII - SEVERANCE PAY: 1. The Employer shall contribute a sum equal to five (5¢) cents per hour for each hour worked by each employee, covered hereunder to the Severance Pay Trust Fund. The said Fund shall be jointly administered by an equal number of Employerdesignated Trustees and Union-designated Trustees. The Trustees are empowered to prepare and enter into a Trust Agreement, under which the Fund shall be administered and to make amendments thereto from time to time as they, in their discretion, shall determine. 2. The Trustees are authorized and empowered to determine qualifications for benefits, the amounts thereof, and the circumstances under which they shall be granted to employees who are permanently severed from the payroll of their Employers for reasons other than retirement. 3. The Employer shall remit and pay over such sums to the Trustees of such Fund not later than the tenth (10th) day of the current month for the preceding month's work hours. 4. If required, the Trustees of such Fund shall receive approval of the U.S. Internal Revenue Service for such contributions as tax-exempt business deductions and such Fund shall continue to qualify for such approval. 5. Holidays and vacations shall be considered hours worked for the purpose of this Article. ARTICLE XVIII - LEAVE OF ABSENCE FOR DEATH IN FAMILY: 1. The Employer shall grant three (3) calendar days off without loss of pay to an employee who has a death in his immediate family, inclusive of the day of the funeral. "Immediate family" shall include: parents, foster parents, spouse, children, sisters and brothers. In the event of the death of a father-in-law or mother-in-law, or a grandparent, the employee shill be allowed the day of the funeral without loss of pay, provided he attends the funeral.

2. On outside construction job sites, the employer shall supply a heated trailer with telephone for employees covered hereby.

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3. A shop steward shall be assigned each supply yard and each road -- and building-construction job site at all times, and shall be furnished with vehicle for means of transportation. If an employer has more than one such job site in operation, a shop steward may cover all of such job sites.

4. In those Companies where the Union represents automotive mechanics, mechanics' helpers, welders, stockroom men and working foremen, such employees shall continue to perform all of the duties heretofore performed by them.

5. The starting and checking of all trucks and equipment covered hereby shall be performed by employees covered hereunder.

6. The Employer shall use equipment covered by this agreement and operated by employees covered hereby for the purpose of delivering materials, parts, cones, planks or any equipment or material for construction or towing, where such equipment can be used for such purposes, in the judgment of the Union delegates.

7. If an employer does not receive dynamite from a distributor in either Westchester or Putnam Counties, having a contract with the Union, he shall assign two (2) men to the dynamite truck at all times for servicing, and shall engage two (2) men for loading or unloading caps or dynamite.

8. Employees covered hereby shall operate snow plows, whether they be jeep, suburban, pick-up or any other type of vehicle.

9. The Employer may use pick-ups or suburbans for transporting personnel and hand tools. However, if any such vehicle is used to transport any other materials, it is agreed that the same shall be operated by an employee covered hereby, who shall continue to operate such vehicle.

10. Employers having plants outside the geographical area covered hereby, may not use trucks or equipment from any such plant in the area covered hereby, if the Employer has trucks or equipment normally used in the area covered by this agreement available.

11. When employees are required to move vehicles covered by this agreement from the job back to the yard or another job, they shall be provided transportation back to the starting point and they shall be paid the appropriate rate until transported to the starting point for all time so spent.

12. No ready-mix concrete mixer truck of any type of design shall carry more than 15 cubic yards of concrete. No restriction or limitation is placed on any other vehicle, load or material.

- 13. Employees shall not be held responsible for overloaded vehicles. Whenever a driver is penalized because of such overload, the Employer shall bear all costs in connection with such overload penalty and shall pay damages assessed against the employee, including accrued overtime, for delay and/or any lost carning opportunity that the employee might suffer. In the event the employee shall suffer a revocation of his Chauffeur's license solely because of violation of any laws by the Employer, the loyer shall provide suitable and continued employment for such employee, at not less than his regular earnings, for the entire period of revocation of license, and the employee shall be reinstated in the seniority he held prior to revocation of his driver's license, after his driver's license is restored.
- 14. When trucks work in Westchester or Putnam Counties on Saturday or any premium day, there must be a mechanic on duty.
- 15. An employee covered hereby shall be assigned to a truck that supplies both fuel and grease.
- 16. The Employer shall call the Union for help not later than 4:30 P.M. of the day preceding the day such help is required to report for work.
- 17. If an Employer transfers equipment outside the territorial jurisdiction of the Union for lack of work, and if thereafter the Employer obtains work within the Union's jurisdiction for which the transferred equipment is suitable, the Employer will return the equipment without undue delay.

Any dispute concerning the interpretation or application of this clause shall be referred to a panel of two Employer designees and two Union designees.

ARTICLE XX - JOB CONFERENCE:

1. An Employer who is a General Contractor or Builder, shall meet with the Union prior to the commencement of any job, project, construction or demolition work, to discuss mutual problems in connection therewith. The names of all sub-contractors shall be furnished to the Union at such Conference, if known by the Employer at that time, and, in any event, the names of such sub-contractors shall be furnished to the Union before said sub-contractor shall connence work.

ARTICLE XXI - DURATION OF AGREEMENT:

- 1. This Agreement shall take effect as of July 1, 1970, and shall expire June 30, 1973.
- This Agreement shall be finding upon the parties, their successors and assigns, by operation of law or contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers and their respective scals to be hereunto affixed.

EMPLOYER:	<u>UNION</u> :
Bir San A. D. L. Zing	LOCAL 456, INTERNATIONAL BROTHER- HOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
highet therego	BY: Semel & Times

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Local 456

Headquarters 160 SO. CENTRAL AVE. ELMSFORD, N.Y. 10323 Tel. LYric 2-9500-2-3-4

a 3077

JOHN ACROPOLIS
EDWARD DOYLE
Honorary Presidents

PETE CALABRESE
Honorary Secretary-Treas.

JOHN LEGGIO President & Business Agent

ARTHUR REVELLESE
Vice-President & Business Agent

DOMINIC REVELLESE Secretary-Treasurer and Business Agent

HARRY WILLIAMS
Business Agent

April 9, 1973

MUT TO FILE

Gentlemen:

Please be advised that the Union desires to terminate its agreement with you on June 30, 1973.

The Union offers to meet and confer with you for the purpose of negotiating a new contract at a time and place that will be mutually convenient to the parties.

Please let us know when it would be convenient for you to confer for this purpose.

Very truly yours,

Dominic Revellese, (1)

Secretary-Treasurer LOCAL UNION NO. 456

DR:dc

· NATIONAL LABOR RELATIONS BOARD

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J.R. STEVENSON COM

mt Ano

No. Pages

June 27, 1973

RETURN TO

International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America Local 456 160 South Central Avenue Limsford, New York 10523

Attention: Mr. Dominic Revellese

Gentlemen:

Afference is made to your letter of April 9, 1973 regarding the termination of the agreement as of June 30, 1973.

You are advised that inasmuch as we do not employ teamsters in any of our operations nor do we have a need to employ such labor, we see no need to enter into negotiation for a new contract.

If, in the future, our operations require the employment of teamster labor, we shall be very happy to meet and confer for the purpose of negotiating a new contract.

Very truly yours,

J. R. STEVENSON CORPORATION

V. T. Jovene

VTJ:lm

NATIONAL LABOR RELATIONS EDARD

Docket No. OFFICIAL CARRET NO.

RETURN TO

July 2, 1973

Mr. Arpad Korchma RD #2 Valley Drive West Yorktown Heights, New York 10598

Dear Mr. Korchma:

Inasmuch as you have refused to accept termination pay on Friday, June 29, 1973, at the Courthouse Project, White Plains, New York, we are enclosing herewith our check No. 4088, in the amount of One Hundred Ninety-two and 47/100 (\$192.47) Dollars. This represents payment of wages for the period ending June 29, 1973 and is termination pay.

Inasmuch as the union has terminated the agreement as of June 30, 1973 and due to the fact that we do not employ teamsters, we do not foresee our organization entering into a new agreement with the teamsters at this time.

Very truly yours,

J. R. STEVENSON CORPORATION

V. T. Jovene

VTJ: 1m Enclosures

SENDER: Be sure to follow instructions on other side

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	4088
To the property of the following accepted in the following accepted in Formed 6/29/73 26095 IFEMPSIEAD, N. V. 11550 July 2	19 73 1-2 280 -\$ 192.47/00
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and between _______, hereinafter termed the EMPLOYER, and LOCAL 456, TEAMSTERS and CHAUFFEURS UNION, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter termed the UNION.

The Parties hereto agree as follows:

ARTICLE I - UNION RECOGNITION:

l. The Employer hereby recognizes the Union as the sole and exclusive collective bargaining agent for employees employed by the Employer in its present establishments or those hereafter opened by the Employer in Westchester or Putnam Counties for employees in the following classifications:

Chauffeurs on straight trucks, trailer tractors (all types), 3-axle trucks (physically load and unload), Euclids, A & T Trailer Wagons, mixer men (asphalt plants and cement hopper men, including employees who weigh ingredients), yardmen and helpers, asphalt and concrete plants (both portable and stationary), high pressure boiler operators in asphalt and batch plants (either portable or stationary), pick-up trucks, dynamite trucks, agitator trucks, central mixing plants (manual or automated), weighmasters, maintenance personnel of asphalt and concrete plants (portable or stationary), operators of block plants, roller trucks, A-frame trucks operated from inside the cab, winch trucks operated from inside the cab, operators of tow trucks, dual purpose grease and fuel trucks, fuel trucks, operators of stone crushers and maintenance of such equipment, operators of seeding and mulching trucks, water trucks, lift trucks in garages, yards and job sites, belly dumpers, tire trucks, welding trucks on pipelines, drivers of post-hole diggers, mortar mixing trucks, suburbans (when carrying materials and/or power tools to, from and on the job site), operators of oil distributor trucks, operators of towing and towed equipment, operators of scrapers and turnapulls, which are loaded by shovel or bucket, operators of vehicles moving cranes, shovels, cats, etc., snow-plows (whether jeep, suburban, pick-up or other type of vehicle), maintenance personnel in all batch plants, asphalt plants and crushers, and employees in each and every classification now represented by the Union.

- 2. All employees in such classification shall become and remain members of the Union as a condition of continued employment thirty (30) days after the execution of this agreement.
- 3. All new employees shall, as a condition of continued employment, become members of the Union thirty (30) days after the date of their initial employment, and remain members thereof throughout the term of this agreement.

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- 4. The Employer shall deduct from the wages of employees covered hereby, who sign dues deduction authorization forms, the sum of ten cents (10¢) for each hour worked weekly by each employee and remit the same weekly to the Union with a list of employees, the number of hours worked by each and the name of any employee who shall fail to sign such an authorization. Such authorizations shall be signed in duplicate with one copy supplied to the Union, and they shall be irrevocable for a period of one year or the termination of the collective bargaining agreement, whichever is sooner, and shall be automatically renewed from year to year unless sixty (60) days prior to any anniversary date such authorization shall be terminated by notice to the Employer and to the Union.
- 5. The Employer shall notify the Union, in the event the Employer needs additional help, and the Union shall refer applicants without discrimination as to their membership or non-membership in the Union; and the Employer shall have the right to determine which of said persons referred by the Union shall be employed.
- 6. In making such referral or selection, the parties shall give due consideration to prior experience of the applicant in the industry, together with the applicant's competence to perform the work.

ARTICLE II - WAGES:

1. The following minimum scale of wages shall be paid by the Employer:

Effective July 1, 1973 (Per Day)

Classifications:

Chauffeurs:

Tractor T:	bbs	00
-Euclid (-Athey Wa -Trailer -Belly Du		00
Belly Du -A-Frame -Winch Tr	nps (under 40 tons)	00
Dynamite Seeding T Dual Purp Fuel Truc Mulching	65. Frucks	00 00 60 60

Effective July 1, 1973 (Per Day) Water Trucks......\$65.00 Darts (up to 100 tons)...... 77.00 RXS...... 80.00 Post Hole Diggers..... 65.00 Mortar Mixing Trucks...... 65.00 Concrete Mixer Trucks..... 65.00 Suburbans..... 65.00 Oil Distributor Trucks..... 65.00 Pick-Up Trucks..... 65.00 Hopper Men..... 65.00 Mixer Men (asphalt plant and cement hopper men - one who weighs ingredients and in manual or automated central mixing plants)...... 66.00 Weighmaster..... 67.00 High pressure boiler in asphalt and batch plants..... 66.00 Welders..... 66.80 Maintenance Men...... 66.80 Mechanics..... 66.80 Mechanics Helpers..... 64.40 Stock Room Men..... 64.40 Working Foremen in Garage..... 70.20 Crusher Operators................. 65.00 Lift Trucks (in garage, yards and on job sites)...... 65.00 Yardmen and Helpers..... 63.00

The above rates shall be increased by \$.50 per hour, effective July 1, 1974, and by additional \$.50 per hour, effective July 1, 1975.

- 2. The shop steward in each yard shall be paid a rate equal to the highest rate of pay of any employee in such yard working under the provisions of this contract.
- 3. In the event a lower paid employee is assigned to a position in a higher scale, such employee shall be paid at the higher rate for a full day in which he performed such work, irrespective of the number of hours he actually works. In no event shall an employee receive less than the wage provided for his classification.
- 4. Employees who work a second shift shall receive 10% above the basic rate.
- 5. Employees who work a third shift shall receive 15% above the basic rate.
- 6. If an employee is laid off, he shall be paid wages and other benefits in full, not later than the first pay period following the layoff.

7. Whenever an employee covered hereby shall be assigned to the same work operation with an employee represented by the Engineer's Union at the same job or plant site, he shall receive the same rate of pay for such work as the employee represented by the Engineer's Union receives, or the rate provided herein, whichever is greater.

ARTICLE III - HOURS OF WORK AND OVERTIME:

- 1. (a) The normal work week of all employees shall consist of forty (40) hours, eight (8) hours per day, five (5) days per week, Monday to Friday.
- (b) The work day shall start at 7:00, 7:30 or 8:00 a.m. The Employer shall post the starting time not later than 4:15 p.m., on Friday of the preceding week. An employee's starting time shall be uniform throughout the week, except under special circumstances which shall be mutually agreed. An employee who is not assigned to work after reporting therefor shall be paid two (2) hours' pay, and, if requested to wait for the Employer, shall wait for two (2) hours computed from the time he was instructed to report. The day for which an employee receives reporting pay shall be counted to determine vacation credits.
- (c) Any employee who shall start work later than the posted starting time through no fault of his own shall, not-withstanding, have his time computed from the posted starting time.
- 2. A lunch period of thirty (30) minutes shall be granted to the employees.
- 3. Employees assigned to work on any day shall receive not less than eight (8) hours' pay.
- 4. Employees shall be paid at the rate of one and one-half (1½) times the straight-time hourly rate of pay for all work performed for the following:
 - (a) work before the scheduled starting time or after the scheduled finishing time.
 - (b) work in excess of eight (8) hours per day or forty (40) hours per week.
 - (c) work performed on Saturdays.

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5. In the event an employee is assigned to work before the scheduled starting time, he shall nevertheless be afforded work or paid for not less than eight (8) hours, computed from the scheduled starting time hereinabove specified.

Employees in the Classification of mechanic, plant man and yardman, having at least ninety (90) days of employment, shall be guaranteed forty (40) hours of work each week. This guarantee shall not apply for the first week of the season, after layoff, nor for emergency conditions such as snow-removal, or to receive deliveries during the off-season. Yardmen covered by this guarantee shall be required to perform non-mechanic duties in the garage, if required to by the Employer.

ARTICLE IV - SUNDAYS AND HOLIDAYS:

l. Employees who work two (2) days in the calendar week (a reporting day shall be deemed a day of work, so as to qualify for holiday pay; however, and employee must work at least one (1) day), in which any of the following holidays occur shall be paid for the holiday at straight-time rate of pay without working:

NEW YEAR'S DAY
LINCOLN'S BIRTHDAY
WASHINGTON'S BIRTHDAY
GOOD FRIDAY
DECORATION DAY
INDEPENDENCE DAY

LABOR DAY
COLUMBUS DAY
ELECTION DAY
VETERAN'S DAY
THANKSGIVING
CHRISTMAS DAY

- 2. The Employer shall not lay off an employee for the purpose of avoiding a paid holiday. Holidays shall be paid for irrespective of the day they may occur.
- 3. All work performed on a holiday shall be paid at the rate of triple time, which includes holiday pay. When a holiday or holidays fall during an employee's vacation, he shall be granted an additional number of days off with pay.
- 4. Work performed on Sundays shall be paid for at twice the straight-time hourly rate of pay.
- 5. An employee who has worked for the Employer for at least ninety (90) days, if laid off, shall be paid for any holiday occurring within a period of seven (7) calendar days of his last day of work. A laid-off employee shall be paid in the same payroll week in which he was laid off with pay also for his pro rated vacation.

ARTICLE V - VACATIONS:

- 1. Employees shall receive vacations with pay, in accordance with the following schedule:
- (a) Four (4) weeks after twenty (20) years of seniority service.

Three (3) weeks after ten (10) years of seniority service.

Three (3) weeks and one (1) day after sixteen (16) years of seniority service.

Three (3) weeks and two (2) days after seventeen (17) years of seniority service.

Three (3) weeks and three (3) days after eighteen (18) years of seniority service.

Three (3) weeks and four (4) days after nineteen (19) years of seniority service.

The third (3rd) week and every additional day shall be granted to an employee in the calendar year in which he completes his tenth (10th) or other mars of seniority service.

- (b) Two (2) weeks after one number and thirty (100) days of employment in a calendar year. However, an employee with five (b) years of seminarity service shall receive two (2) works' paid vacation, provided he works ninety (90) days in a calendar year.
- (c) (no (1) week after ninety (90) days of employment in a calendar year. Employees who receive one (1) week of vacation shall receive one (1) additional day for each additional eighteen (10) days of employment, not exceeding ten (10) days, in any one calendar year.
- (d) A casual employee shall be granted one (1) days' haid vacation for each eighteen (18) days of employment. An employee who coes not qualify for vacation shall be paid prorata on a daily basis.
- Verified employment with predecessors in interest shall be computed to determine vacation benefits.
- 3. Employee shall be paid for vacations in advance, and those entitled to more than one (1) week shall be granted consecutive weeks.
- 4. Holidays shall be counted as days worked for vacation benefits. Employees shall select vacations in accordance with their seniority. Time for vacations shall be mutually agreed upon between the Employer and the Union. For each day that an employee reports for work and receives reporting pay, he shall receive credit for one (1) day's employment for purposes of determining vacation eligibility.
- 5. An employee having at least ten (10) years of service who becomes disabled and is unable to work shall receive vacation pay for the period of one (1) year following such disability.

ARTICLE VI - LAYOFF AND REINSTATEMENT:

- 1. Seniority shall be in accordance with classifications. The Union and the Employer have prepared a list containing the seniority standing of the employees which shall be reviewed at least once each year. In the event a layoff shall pecome nacessary, the employee with the least seniority shall be the first laid off. Rehiring shall be accomplished in inverse order of layoff. However, notwithstanding the above, the shop steward shall be the last employee laid off and the first one rehired.
- 2. Somiority shall not be deemed preached if an employee is rehirco within one (1) year after his layoff.
 - 3. Senior employees shall be given first preference.

ARTICLE VID - EXTRA EQUIPMENT:

l. In the event the Employer hires additional equipment from employers not under contract with the Union, his employees shall operate such equipment if they are not otherwise assigned to work, but, in any event, such nized equipment shall be operated by an employee in accordance with the provisions of this agreement.

ARTICLE VIII - INDIVIDUAL CONTRACTS:

1. The Employer shall not make any contract with an individual employee, nor shall the Employer attempt to enter into such a contract with an employee.

ARTICLE IX - PAST BENEFITS:

1. The Employer shall continue during the term of this agreement any benefit or condition of work more favorable than those contained in this agreement.

ARTICLE X - WELFARE FUND:

- 1. The Employer shall contribute a sum equal to forty-five (45¢) cents per hour for each hour worked, not exceeding forty (40) hours per week by each employee covered in this agreement to Trustees of the Westchester Teamsters Health and Welfare Fund, heretofore designated by the parties, for the purpose of securing medical and social benefits for employees. In the event, however, that the law shall be changed and permit such action, the Employer shall pay such sums to the Union to be administered by it for the purpose for which the Westchester Teamsters Health and Welfare Fund is established.
- 2. The Employer shall remit and pay over such sums not later than the tenth (10th) day of the current month for the preceding month's payroll.
- 3. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable by him to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event that the Employer's record of payments -- in the opinion of the Trustees -- justifies such consideration.
- 4. Holidays and vacations shall be considered hours worked for the purpose of this Article.

ARTICLE XI - EMPLOYEES' EXPENSES:

- 1. The Employer shall pay employees all reasonable expenses incurred by them while they are away from home in pursuance of the Employer's business.
- 2. The Employer shall pay employees for the time lost on account of court appearances in the Employer's behalf, and for presence at hearings conducted before the Workmens' Compensation Board.

ARTICLE XII - PAY AND RECORDS:

l. The Employer shall pay wages weekly in cash. The Employer shall maintain records of the employment of employees, and comply with all the laws governing the employment of employees (including, but not limited to, Workmens' Compensation and Social Security).

l. The Employer shall not, during the term of this agreement, contract or agree to contract or otherwise assign, work performed by employees covered by this agreement to any other firm, contractor, corporation, partnership, individual or otherwise, except as provided by ARTICLE VII hereof. It is agreed that employees covered by this agreement shall continue to do all types of work heretofore performed by them. The Employer shall use employees covered hereby to transport cranes, cats or shovels.

ARTICLE XIV - DISCHARGE:

l. The Employer may discharge an employee for just cause. However, the Employer shall discuss his proposed action with a representative of the Union before the discharge becomes effective.

ARTICLE XV - STRUCK WORK:

l. It shall not be a breach of this contract nor cause for discharge or other discipline for any employee to refuse to cross a primary picket line.

ARTICLE XVI - PENSION:

- 1. The Employer shall pay monthly the sum equivalent to seventy (70¢) cents per hour for each hour worked by each employee not in excess of forty (40) hours per week, to the Trustees of the Westchester Teamsters Pension Fund.
- 2. The contributions provided for hereunder shall continue so long as the Pension Fund previously established continues to qualify for approval by the U.S. Internal Revenue Service.
- 3. The Pension Plan shall provide that employees must retire upon reaching sixty-five (65) years of age.
- 4. The Employer shall post a performance bond in an amount equal to six (6) times the average monthly contribution payable by him to such Fund. The Trustees of the Fund, however, are empowered to waive the posting of such bond in the event that the Employer's record of payments in the opinion of the Trustees justifies such consideration.
- 5. Holidays and vacations shall be considered hours worked for the purpose of this Article.

ARTICLE XVII - SEVERANCE PAY:

- 1. The Employer shall contribute a sum equal to five (5¢) cents per hour for each hour worked by each employee covered hereunder to the Severance Pay Trust Fund. The said Fund shall be jointly administered by an equal number of Employer-designated Trustees and Union-designated Trustees. The Trustees are empowered to prepare and enter into a Trust Agreement, under which the Fund shall be administered, and to make amendments thereto from time to time as they, in their discretion, shall determine.
- 2. The Trustees are authorized and empowered to determine qualifications for benefits, the amounts thereof, and the circumstances under which they shall be granted to employees who are permanently severed from the payroll of their Employers for reasons other than retirement.

- 3. The Employer shall remit and pay over such sums to the Trustees of such Fund not later than the tenth (10th) day of the current month for the preceding month's work hours.
- 4. If required, the Trustees of such Fund shall receive approval of the U.S. Internal Revenue Service for such contributions as tax-exempt business deductions and such Fund shall continue to qualify for such approval.
- 5. Holidays and vacations shall be considered hours worked for the purpose of this Article.

ARTICLE XVIII - LEAVE OF ABSENCE FOR DEATH IN FAMILY:

l. The Employer shall grant three (3) calendar days off without loss of pay to an employee who has a death in his immediate family, inclusive of the day of the funeral. "Immediate family" shall include: parents, foster parents, spouse, children, sisters and brothers. In the event of the death of a father-in-law or mother-in-law, or a grandparent, the employee shall be allowed the day of the funeral without loss of pay, provided he attends the funeral.

ARTICLE XIX - WORKING CONDITIONS:

The following conditions of work shall be observed:

- l. At least one man working under the provisions of this agreement shall at all times be assigned to the operation of A-Frames, winch trucks (operated from inside), and dual purpose grease and fuel trucks. Two (2) men shall be assigned to oil distributor trucks and to a fuel truck, when servicing equipment.
- 2. On outside construction job sites, the Employer shall supply a heated trailer with telephone for employees covered hereby.
- 3. A shop steward shall be assigned each supply yard and each road and building-construction job site at all times, and shall be furnished with vehicle for means of transportation. If an Employer has more than one such job site in operation, a shop steward will cover all of such job sites. The shop steward may be assigned the duties of a safety coordinator at the discretion of the Employer and under the direction of the Employer.
- 4. In those Companies where the Union represents automotive mechanics, mechanics' helpers, welders, stockroom men and working foremen, such employees shall continue to perform all of the duties heretofore performed by them.
- 5. The starting and checking of all trucks and equipment covered hereby shall be performed by employees covered hereunder.
- 6. The Employer shall use equipment covered by this agreement and operated by employees covered hereby for the purpose of delivering materials, parts, cones, planks or any equipment or material for construction or towing, where such equipment can be used for such purposes, in the judgment of the Union delegates.

- 7. If an Employer does not receive dynamite from a distributor in either Westchester or Putnam Counties, having a contract with the Union, he shall assign two (2) men to the dynamite truck at all times for servicing, and shall engage two (2) men for loading or unloading caps or dynamite.
- 8. Employees covered hereby shall operatesnow plows, whether they be jeep, suburban, pick-up or any other type of vehicle.
- 9. The Employer may use pick-ups or suburbans for transporting personnel and hand tools. However, if any such vehicle is used to transport any other materials, it is agreed that the same shall be operated by an employee covered hereby, who shall continue to operate such vehicle.
- 10. Employers having plants outside the geographical area covered hereby may not use trucks or equipment from any such plant in the area covered hereby, if the Employer has trucks or equipment normally used in the area covered by this agreement available.
- ll. When employees are required to move vehicles covered by this agreement from the job back to the yard or another job, they shall be provided transportation back to the starting point and they shall be paid the appropriate rate until transported to the starting point for all time so spent.
- 12. No ready-mix concrete mixer truck of any type of design shall carry more than 15 cubic yards of concrete. No restriction or limitation is placed on any other vehicle, load or material.
- 13. Employees shall not be held responsible for overloaded vehicles. Whenever a driver is penalized because of such overload, the Employer shall bear all cost in connection with such overload penalty and shall pay damages assessed against the employee, including accrued overtime, for delay and/or any lost earning opportunity that the employee might suffer. In the event the employee shall suffer a revocation of his Chauffeur's license solely because of violation of any laws by the Employer, the Employer shall provide suitable and continued employment for such employee, at not less than his regular earnings, for the entire period of revocation of license, and the employee shall be reinstated in the sembrity he held prior to revocation of his driver's license, after his driver's license is restored.
- 14. When trucks work in Westchester or Putnam Counties on Saturday or any premium day, there must be a mechanic on duty. The Employer shall supply mechanics with tools larger than 2".
- 15. An employee covered hereby shall be assigned to a truck that supplies both fuel and grease.
- 16. The Employer shall call the Union for help not later than 4:30 P.M. of the day preceding the day such help is required to report for work.
- 17. If an Employer transfers equipment butside the territorial jurisdiction of the Union for lack of work, and if thereafter the Employer obtains work within the Union's jurisdiction for which the transferred equipment is suitable, the Employer will return the equipment without undue delay.

Any dispute concerning the interpretation or application of this clause shall be referred to a panel of two Employer designees and two Union designees.

ARTICLE XX - JOB CONFERENCE:

1. An Employer who is a General Contractor or Builder, shall meet with the Union prior to the commencement of any job, project, construction or demolition work, to discuss mutual problems in connection therewith. The names of all sub-contractors shall be furnished to the Union at such Conference, if known by the Employer at that time, and in any event, the names of such sub-contractors shall be furnished to the Union before said sub-contractor shall commence work.

ARTICLE XXI - DURATION OF AGREEMENT:

- 1. This Agreement shall take effect as of July 1, 1973, and shall expire June 30, 1976.
- 2. This Agreement shall be binding upon the parties, their successors of assigns, by operation of law or contract.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed by their respective officers and their respective seals to be hereunto affixed.

EMPLOYER:

UNION:

BY: TO STEVEY SCH

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

BY: Sammie Hedberry Ved

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

BEFORE THE NATIONAL LABOR RELATIONS BOARD

In the Matter of:

1

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND : HELPERS OF AMERICA

CASE NO. 2-CB-5412

and

J. R. STEVENSON CORP.

26 Federal Plaza New York, New York November 28, 1973

Pursuant to notice, the above-entitled matter came on for hearing at 11:00 a.m.

BEFORE:

BERNARD J. SEFF, Administrative Law Judge

Appearances:

THOMAS T. TRUNKES, ESQ.

Appearing as counsel for the General

Counsel

JOHN J. SHEEHAN, ESQ.

51 Chambers Street, New York, New York, 10007, appearing on

behalf of respondent union

JOEL H. GOLOVENSKY, ESQ.

Rains, Pogrebin & Scher,

Rains Bldg., Mineola, New York,

aobo Charging Party

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MR. TRUNKES: I would like to call Mr. Vincent Jovene as my first witness.

Whereupon,

VINCENT JOVENE,

have been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

- Q. (By Mr. Trunkes) State your full name, please. A. Vincent T. Jovene.
- Q. What is your occupation, Mr. Jovene? A. I am the secretary-treasurer of the organization.
 - Q. That's J. R. Stevenson Corporation? A. Yes.
- Q. And how long have you been connected with this firm? A. Since 1961.
 - Q. Is this a family business in a sense? A. Yes, it is.
- Q. Is your father, does he have a business with the corporation, a position with the corporation?

 A. He is the chairman of the board.
 - Q. How long has he been operating this organization? A. Since 1953.
- Q. How long has J. R. Stevenson Corporation actually been in business as such?A. 1927.
 - Q. Now, do you recall or do you know whether Stevenson became a member of the building trades employers association of Westchester?

 A. Yes.
 - Q. Approximately when? A. It was in the 1950's.

No, I'm sorry. It was even before '50, even. It goes back -

JUDGE SEFF: Keep your voice up, please.

THE WITNESS: It goes back into the forties, I think.

Q. And do you have knowledge of when the Building Trades Employers
 Association, if they did, entered into any collective bargaining agreements
 with respondent Local 456?
 A. Yes.

To my information they had an agreement in 1970.

- Q. And does the BTEA, and I will use that as the short form, have any collective bargaining agreements with any other trades in Westchester County?

 A. Yes.
- Q. And does Stevenson have any collective bargaining agreements with other trades outside of the teamsters in Westchester? A. Only as a member of the Association.
 - Q. Now, did there come a time when J. R. Stevenson became a general contractor at the job site in White Plains?

 A. Yes.
 - Q. When did that occur? A. It was March of '71.
 - Q. And what are you obligated to do there? A. We were the we were awarded the contract for general construction work of the courthouse complex in White Plains.
 - Q. And did work start? A. Work started in March of '71.
 - Q. And when is this scheduled to end? A. It is scheduled to end December 31, 1973.
 - Q. Now, after you began working at the job site, J. R. Stevenson site, did you or any employee of J. R. Stevenson was anybody approached by any representative of Local 456? A. Yes.

I think it was in September of '71 that we were approached by the delegate of the teamsters and asked to sign the agreement, the teamster agreement.

Q. Do you recall the name of this delegate? A. I know him as Chip.

- Q. And do you know who he approached to request that you sign?

 A. Well, it was through our superintendent that was on the job at that time, Frank Paratore.
- Q. And did you or Mr. Paratore agree to sign an agreement with the teamsters, the respondent?

 A. Mr. Paratore called me and I told him that we don't have to sign —

MR. SHEEHAN: I object to what he told him. Hearsay.

MR. TRUNKES: I will withdraw the question.

- Q. As the result of this conversation with you, did you sign a contract with the teamsters on the request of A. Yes.
- Q. Well, before you signed the contract with did the teamsters do anything, did anything happen?

 A. There was it was a picket.
 - Q. Let's start from the beginning.

This fellow Chip asked Mr. Paratore to sign the contract? A. To sign the contract.

- Q. Mr. Paratore contacted you? A. That's correct.
- Q. Now, did you sign the contract after Mr. Paratore A. I told Paratore that we do not have to sign the contract.

MR. SHEEHAN: I object to what he said to Mr. Paratore as hearsay.

MR. TRUNKES: I agree.

Q. As the result of the conversation you had with Mr. Paratore, did
J. R. Stevenson at that time sign a contract with the respondent? A. No. Q. No.

Then what happened after that? A. Then they put pickets up.

- Q. Where was that? A. At the site.
- Q. Do you recall what the picket sign said? A. No.
- Q. Do you recall how many days the picketing lasted? A. It lasted I think it was two days.

- Q. As a result of the picketing what did you do? A. We signed the contract.
- MR. TRUNKES: Mark these as general counsel exhibit 2.
 - Q. (By Mr. Trunkes) Would you look at it, please. A. Yes. This is it, the contract.
 - Q. Is this the document that you signed, the original contract with respondent, signed with Stevenson? A. Yes.
 - Q. And did you recall, I think the Judge asked you if there was a date.
- There is no date on it. A. I don't recall.
 - Q. So when was it signed? A. It was probably signed in September of '71.
 - MR. TRUNKES: I offer this into evidence as General Counsel's Exhibit 2.
 - MR. SHEEHAN: No objection.
 - JUDGE SEFF: Hearing no objection, General Counsel's Exhibit 2 is received in evidence.

(General Counsel Exhibit 2 for identification was received in evidence.)

JUDGE SEFF: Necessary copies will be provided to the reporter as soon as possible.

I have been informed that the necessary copies are already in the possession of the court reporter.

- 21 Continue, please
 - Q. Up to the time that the contract was signed, had you employed any teamster members? A. No.

- Q. Did you have any need for their services, any teamsters? A. No.
- Q. Now, under the provisions of the contract, does it state was Stevenson compelled to employ a shop steward? A. Yes.

JUDGE SEFF: Will you make reference to the page on which this provision appears?

THE WITNESS: It is under the work rules, I think.

MR. TRUNKES: Under Article 19, working conditions.

JUDGE SEFF: On page?

THE WITNESS: Page 9, item 2, 3 -

MR. TRUNKES: Can we stipulate, Mr. Sheehan, item 2 and 3 provide that on the construction job site the employer shall supply a heated trailer with a telephone for employees covered here by.

And item 3 of article 19 states:

"A shop steward shall be assigned each supply yard and each road—
and building-construction job sites at all times, and shall be furnished
with a vehicle as a means of transportation. If an employer has more than
one such job site, a shop steward may cover all of such job sites."

Do you stipulate to that?

MR. SHEEHAN: Conceded.

- Q. As a result of that article, you did hire a teamsters, is that correct?
 A. Yes.
 - Q. And he was a shop steward on the job? A. Yes.
 - Q. All right.

22

Did he perform any job function or service of any kind for J. R. Stevenson Corp.? A. No.

JUDGE SEFF: Identify him by name, please.

MR. TRUNKES: Let the record show the witness went to his records to check to see the name of the ensployee that was hired under this agreement.

- Q. Are you ready to identify the man as the judge asked? A. Yes.
- Q. What was his name? A. Victor Toran.
- Q. And do you know how long he was employed by you? A. Yes. He was — he started on September 21, 1971 and was on through January 11, 1972.
 - Q. Was he replaced? A. Yes.

Well, in between that time he had, he was, he had two weeks or a week vacation.

He was replaced by a temporary shop steward.

I'm sorry, it wasn't him. It was Arpad Korchma replaced Toran on January 12, 1972.

- Q. How do you spell this man's name? A. First name or -
- Q. Last name? A. K-o-r-c-h-m-a.
- Q. K-o-u or K-o-r? A. I'm sorry. K-o-r Korchma.
- Q. Korchma? A. Korchma.
- Q. And this is the gentlemen who is the subject of the dispute? A. Yes.
- Q. In other words, from the time you signed the original contract, there have only been two employees who were members of Local 456, the first
- geneleman and then he left and then Korchma replaced him? A. Well, there were two three other men that were in and out when Korchma was either on vacation or was sick.
 - Q. They were just temporary employees? A. Yes.
 - Q. Now, did you have occasion yourself to visit the job site and observe Mr. Korchma's duties?

 A. Well, I did visit the job site.

I never observed Korchma.

Q. And that would have been done by one of your superintendents, is that correct?

A. Yes.

- Q. Do you know if Mr. Korchma or his predecessor ever drove a truck owned, operated or leased by J. R. Stevenson, Inc.? A. Never.
- Q. Now, after Mr. Korchma or the other gentleman, whose predecessor was on the payroll, did you make any provisions perhaps of using his services for something that he was skilled at, such as driving a truck? A. Well, we had decided in the office, or we were talking in the office that inasmuch as we have him and he is just sitting there, why don't we get a truck and at

least he could drive the truck on the job and transport material.

And so we told our superintendent to check that out before we ordered the truck.

- Q. Who is your superintendent? A. This was our general superintendent, Tony Kneisch.
- Q. Now, as a result of that, was any contract made with respondent?A. Yes.
 - Q. Who made the contact? A. Knesich spoke to the shop steward.
 - Q. Korchma? A. Yes.

MR. SHEEHAN: I object to his hearsay testimony he is about to give as to what he said to Mr. Knesich.

Q. As a result of Mr. Knesich speaking to Mr. Korchma, did he agree to or drive the truck for you? A. No.

We did not purchase the truck.

- Q. Do you recall at some time in the latter part of 1972 in which
- J. R. Stevenson resigned from the BTEA? A. Yes.

It was in December, '72.

26 JUDGE SEFF: You said December '73?

THE WITNESS: 2.

Q. Did this have anything to do with Local 456 in any way, the resignation? A. No.

Q. And you sent them a letter of resignation, is that right? A. Yes. MR. TRUNKES: Mark this General Counsel's Exhibit 3, please.

(Document referred to marked General Counsel Exhibit 3 for identification.)

Q. Mr. Jovene, I show you what has been marked G.C. 3.

Would you identify it? A. This is the letter we sent to BTEA resigning.

JUDGE SEFF: What is the date?

THE WITNESS: December 15, 1972.

Q. And that is your file copy, Mr. Jovene? A. Yes.

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(General Counsel Exhibit 3 for identification was received in evidence.)

JUDGE SEFF: The document is received in evidence.

Q. (By Mr. Trunkes) After you resigned from the BTEA, did your corporation join another association?

A. Yes.

MR. TRUNKES: I would like to mark this as General Counsel Exhibit 4.

(Document referred to marked General Counsel Exhibit 4 for identification.)

Q. Would you look at what has been marked as General Counsel Exhibit 4.

Will you identify it for us, please. A. Yes.

This is the application for membership to the Building Institute of Westchester.

JUDGE SEFF: The date?

THE WITNESS: It is dated January 10, 1973.

MR. TRUNKES: I offer General Counsel's Exhibit 4 into evidence.

MR. SHEEHAN: No objection.

JUDGE SEFF: Hearing no objection, General Counsel Exhibit 4 is received in evidence.

(General Counsel Exhibit 4 for identification was received in evidence.)

- Q. Now, this new association that you joined in January, sir, does this association have contracts with various trades in Westchester? A. Yes.
 - Q. And does it have contracts with Local 456? A. No, it did not.

MR. SHEEHAN: Excuse me.

What was that answer?

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THE WITNESS: No, it did not.

Q. Now, in April of this year, Mr. Jovene, did you receive any notice or letter from Mr. Revellese, the secretary of Local 456?

MR. TRUNKES: Mark these, please.

(Document referred to marked General Counsel Exhibit 5 for identification.)

Q. I show you what has been marked as General Counsel Exhibit 5.Would you identify the document? A. Yes.

This is a letter dated April 9, 1973, from the International Brotherhood of Teamsters, advising that they wished to terminate the agreement dated June 30th.

I'm sorry. They want to terminate the agreement on June 30, 1973 and wish to enter negotiations for a new agreement.

MR. TRUNKES: And I offer General Counsel's Exhibit 5 into evidence.
MR. SHEEHAN: No objection.

JUDGE SEFF: Hearing no objection, General Counsel 5 is received into evidence.

(General Counsel Exhibit 5 for identification was received in evidence.)

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(Document referred to marked General Counsel Exhibit 6 for identification.)

Q. I show you what has been marked as General Counsel Exhibit 6, Mr. Jovene.

Would you identify that document? A. Yes.

This is a letter dated June 27, 1973 from J. R. Stevenson Corp. to the teamsters, acknowledging receipt of their letter of April 9th, and advising them that inasmuch as we have no need for a treamster we did not see any reason to enter into negotiations for a contract.

MR. TRUNKES: I offer General Counsel Exhibit 6 into evidence, your Honor.

MR. SHEEHAN: No objection, General Counsel Exhibit 6 is received in evidence.

(General Counsel Exhibit 6 for identification was received in evidence.)

- Q. Now, at this particular time, in June of this year, Mr. Korchma was on your payroll, is that correct? A. Yes.
- Q. Now, as a result of the letter that you sent to the respondent, was any action taken by your company in regard to Mr. Korchma's employment?
 - A. Yes. We laid him off.
 - Q. And do you recall when that was done? A. June 29th.
- Q. And do you recall if Mr. Korchma received his paycheck at that date?

 A. He refused his pay in the field, and we sent him a certified letter and a check.

MR TRUNKES: I would like to mark this for identification, a document consisting of two pages, as General Counsel Exhibit 7.

(Document referred to marked General Counsel Exhibit 7 for identification.)

MR. TRUNKES: Your Honor, I would like to amend that and say it is a three-page document.

The third part is the photocopy of the back of a check.

- Q. Would you identify for us, Mr. Jovene, what has been marked General Counsel Exhibit 7, the three pages?

 A. It is a letter dated July 2, 1973, from our office to Mr. Korchma, advising that we are enclosing the check that represents a termination pay, inasmuch as he refused his cash
- 32 lay-off in the field.
 - Q. That is page 1, right? A. Yes.
 - Q. What is page 2? A. That's a photostat of the check that we sent with the letter.
 - Q. And page 3? A. Page 3 is the back of the check showing the endorsement.

MR. TRUNKES: I offer this evidence as General Counsel Exhibit 7.
MR. SHEEHAN: No objection.

JUDGE SEFF: Hearing no objection, General Counsel Exhibit 7 is received in evidence.

(General Counsel Exhibit 7 for identification was received in evidence.)

- Q. What was the last day of actual employment by J. R. Stevenson of . Mr. Korchma at this particular time? A. 29th.
 - Q. Of June. A. Of June.
- Q. Now, the following week, do you recall on Tuesday, July 3rd, being notified by your office about anything with regard to the respondent? A. We were notified that there were pickets.
- There were three pickets on the job site, teamsters.
 - Q. Did you observe these pickets yourself? A. I did not see them myself.
 - Q. And how long did the pickets remain? A. Well, they stayed on until July 5th, I think.

- Q. Well, did there come a time when the picketing ended? A. Well, it ended when we signed the contract.
- Q. About how many days after the picketing started did that occur?A. I think we signed July 5th or 6th.
 - Q. Sometime shortly after that? A. Yes, within that week.
- Q. Would you describe to us how it came about that the contract, subsequent contract was signed with Local 456, the respondent? A. Well, inasmuch as they were picketing the project, the operating engineers refused to cross the picket line and the job was stopped.
- Q. The job was stopped? A. We couldn't continue without the operating engineers.

So we did sign the agreement.

34

MR. TRUNKES: Your Honor, respondent's counsel has agreed to substitute photocopies of the original contract.

JUDGE SEFF: Is that a new exhibit, 8?

MR. TRINKES: This is a new Exhibit 8.

I would like to make it General Counsel Exhibit 8.

(Document referred to was maked General Counsel 8 for identification.)

Q. I show you what has been marked as General Counsel Exhibit 8, Mr. Jovene.

Would you identify the document? A. Yes.

This is the teamsters agreement that we signed. It is dated July 1st.

Q. Well, you say it was dated.

What do you mean it was dated? A. The agreement itself, it has a July 1st date on it.

Q. It says effective July 1st? A. Right.

Made as of the first day. But we didn't sign it on the first.

Q. You signed it sometime later? A. Yes.

35 MR. TRUNKES: 1 offer it.

MR. SHEEHAN: No. objection.

JUDGE SEFF: Hearing no objection, G.C. Exhibit 8 is received in evidence.)

(General Counsel Exhibit 8 for identification was received in evidence.)

- Q. As a result of the signing of the contract, General Counsel's Exhibit 8, what happened to Mr. Korchma? A. He came back on the job.
- Q. Now, does your record show the day he started or you don't recall the date?

Does your record show when he started back on the payroll? A. Yes.

MR. TRUNKES: Your Honor, let the record show the witness is checking his files to see when Mr. Korchma returned to this employer.

THE WITNESS: I don't have it here but I do know it was within the week of July 5th.

JUDGE SEFF: When you say returned to the job, sitting in the trailer, is that -

MR. TRUNKES: I will get into that.

I was getting back to his employment.

Q. Just to refresh you, June 29th was on a Friday, the following week, July 2nd was a Monday.

July 3rd was a Tuesday when the picketing started and July 4th was a holiday of course.

Then you have the 5th and 6th were Thursday and Friday.

And then you have the 9th, the following Monday. And then the 10th, et cetera. A. It was the week of the —

Q. Do you recall that picketing continued into the following week.

A. Yes.

It did go through — it went through Friday. And on the 9th I think we signed.

- O. So it was within about a week of the time he started? A. Yes.
- Q. After Mr. Korchma was rehired, does this present, by the way, contain the same provisions we had read in from the last contract, providing a heated trailer, et cetera?

 A. Yes.
- Q. The same provisions under Section article 19 on page 9, 2 and 3?
 - MR. TRUNKES: Can we stipulate Article 19, 2 and 3 is the same?
- 37 MR. SHEEHAN: No, I can't stipulate because there is a different, Mr. Trunkes.

And I think since the contracts are in evidence they speak for themselves.

But the change -

MR. GOLOVENSKY: I will agree with that, your Honor.

MR. SHEEHAN: The change, however, Mr. Trunkes, is in article 19, Section 3, the last sentence.

MR. TRUNKES: "The shop steward may be assigned the duties of a safety coordinator at the discretion of the employer and under the direction of the employer."

MR. SHEEHAN: That's correct.

- Q. You provided this heated trailer again? A. Yes.
- Q. Has Mr. Korchma performed any services for J. R. Stevenson since he was reemployed?

 A. No.
- Q. And what does he do, as far as you know? A. As far as I know, he sits in that trailer. I suppose he checks the trucks coming on the job to see that they are teamsters.

MR. TRUNKES: I have no other questions of the witness.

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CROSS-EXAMINATION

Q. (By Mr. Sheehan) Mr. Jovene, the testimony that you gave on direct, was that of your personal knowledge or what someone else had told you?

MR. TRUNKES: I object to that. That's a very general question.

JUDGE SEFF: Be specific as to the precise thing you are questioning him on.

Q. When you say that Mr. Korchma merely sat in the trailer, do you know that of your own knowledge? A. I haven't - I haven't seen him sitting in his trailer.

MR. GOLOVENSKY: Objection.

Q. Then it's not of your own knowledge.

JUDGE SEFF: Let him finish.

A. I haven't seen him sitting in the trailer nor have I seen him working on the job.

- Q. You haven't seen him at all; is that your testimony? A. That's correct.
- Q. So then what you testified to as to what he did or didn't do was not of your own knowledge?

 A. I know that I did not see him on the job.
- Q. But if you testified as to what he did or didn't do, it's not of your own knowledge and you gave that testimony?

 A. That's correct.
- Q. That's only something that may have come to you from someone else?

 A. That's correct.
- Q. Now, the contract which you identified here as General Counsel Exhibit 2, is that the first contract your company had with Local 456?
- 40 A. Is that the earlier one?
 - Q. That is the contract in 1970. A. Yes.

	Q. Yes.				
	Were you a	an officer of the	corporation in 1	970? A. Yes	S.
	Q. What o	office did you hol	d? A. It w	as - I was the tr	reasurer.
	MR. SHEE	HAN: May this b	be marked for i	dentification pleas	se.
				t referred to mar Exhibit 1 for id	
	*	*	*		*
	Q. Do yo	u recognize that d	locument that h	as been marked	Respondent's
	Exhibit 1?	A. Yes.			
	Q. Does t	hat bear your sign	nature? A.	Yes, it does.	
	Q. And th	nat contract was r	nade before Ger	neral Counsel Exh	nibit 2 was
41	signed?	A. Yes.			
	970.				
	Q. And th	nat date was inser	ted by you in	our handwriting?	Α.
	Yes.				
	Q. Is that	corredt? A.	Yes.		
	Q. And that covered the White Plains construction site? A. Yes.				
	Q. And it	was signed on be	ehalf of the uni	on by Peter Cala	brese?
	A. Yes.				
	Q. And n	ot by Chippy?	A. That's co	rrect.	
	*	*	*	*	*
43	*	*	*	*	*
	MR. SHEE	HAN: I offer th	at exhibit in ev	idence, sir.	
	*	*	*	*	*
44	JUDGE SE	FF: Hearing no	objection, the	union's exhibit 1	is received

(Respondent's Exhibit 1 for identification was received in evidence.)

JUDGE SEFF: You may continue.

in evidence.

BY MR. SHEEHAN:

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- Q. Did you employ anyone under the terms of the contract which is Exhibit 1?

 A. We put a shop steward on.
- Q. And who is that? A. Victor Toran.
- Q. And did he work until the contract expired? A. He worked from September 21, 1970 to January 11, 1972.
 - Q. I'm talking about a date in May of 1970.

Did you hire — A. I don't have any record of that. I'm not sure. We may have.

I wasn't — I didn't remember this contract.

- Q. But there is no question about A. There is no question about it so it may even be that there was a shop steward at the time we signed the contract.
- Q. But you have no record of it? A. I don't have it here. I probably have it in the office.
- Q. Now, in addition to the job site at White Plains, you have other job sites in Westchester County, do you not?

 A. At what time?
 - Q. At the present time. A. Yes.
- Q. And for how long a period have you had such other job sites?

 A. Well, we had we've been doing work in Westchester to my knowledge since I've been with the organization. '61.
 - Q. All right.

In the last several years, since at least you've been at the White Plains job site, you have had job sites in grasslands in Westchester County?

A. Yes.

Q. And where else in Westchester County have you had job sites in the last two or three years?

A. Grasslands, White Plains, of course, the Highlands, is that in White Plains?

The Highlands, we did the church and the — I'm not sure if it is White Plains or just outside of White Plains.

- Q. Now, that contract that you had with the union, the steward covers all the construction sites that you have at any one time?

 A. That's what it says.
- Q. Is it correct to say that at the present time and for the last year and a half or two years you had more than two job sites in Westchester County?

 A. Yes.
- Q. Now, the contract says that you will provide a shop steward with a vehicle for transportation, is that correct?
 - Q. Yes, sure. A. Yes.
 - Q. Now, in the operation of your business, isn't it a frequent occurrence that you transport materials from one job site to another?

 A. Yes.
 - Q. Depending upon the supply.

Have you ever provided a vehicle for that purpose to the shop steward?

A. We tried to.

- Q. Have you ever supplied a vehicle to Mr. Toran or to Mr. Korchma?A. No.
 - Q. Now, will you say it is an every-day occurrence for materials to be shifted about on the job site?

 A. It's an every-day occurrance?
 - Q. Yes. A. You are moving material, yes.
 - Q. So it is a constant and going operation A. Not with a vehicle.
 - Q. Pardon? A. Not with a vehicle.
 - Q. Don't you use a vehicle to move the materials? A. No.
- 49 Q. Ever? A. Sometimes we do but not every day.
 - Q. Isn't that an every-day occurrence in the construction industry?
 A. No.

- Q. Is it an every-day occurrence to move equipment from one job site to another?

 A. Not an every-day occurrence, no.
- Q. How often would it happen on the average? A. It would happen if we have a job that is starting up.

It would probably — it would probably be done at that time maybe for a week, to move material on the site.

- Q. And do you move from one site to another that you may have construction going on at the same time? A. Yes.
- Q. The general contractor would move equipment from one job site to another, is that correct? A. We hire different firms to do that, transportation firms.
 - Q. Who transports the material from White Plains to grasslands?A. Well, I don't know.

I could check my records and find out. I have — I know that we had just recently moved material from White Plains to our Jersey site by a trucking outfit.

- Q. I'm talking now particuarly about from White Plains to Grasslands where you may have a construction project going on currently.

 A. Well, I would assume that we hired a
 - Q. If you don't know A. I don't know.
 - Q. Okay.

Your company did not attend the negotiations of the contract which became effective as of July 1st of this year, did you? A. No.

Q. You testified that the Builders Institute does not have a contract with Local 456?

Do you recall that testimony? A. Yes.

That's the information that we received.

Q. You don't know that to be a fact, do you? A. It is the information that we received.

We called up the Builders Institute and asked them if -

- Q. And do you have any letter or any written communication?
 A.
 No.
 - Q. Attesting to that fact? A. No.
- Q. Did you ever say to any representative of Local 456 that the Building Institute does not have a contract with Local 456?

 A. No.
 - Q. Never made any such representation? A. No.
- Q. Did you ever inquire from Local 456 or any of its representatives —
 A. No.
 - Q. Whether they had such a contract? A. No.
 - Q. And who did you speak to at the Building Institute at that time?
- A. The secretary that's there.

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- Q. Who is that? A. I don't remember his name. I guess it's on the form, the application.
 - Q. That is your application form?
 - Q. I show you the application form, General Counsel Exhibit 4, and ask you what is the name of the secretary on there?
 A. It's not on here I thought it would be on the letterhead.
 - Q. It doesn't appear on that form? A. No.
 - Q. Does Mr. Korchma report for work more than five days a week?
 A. I don't understand your question.
 - Q. Not clear? A. No.
 - Q. Are there any occasions to your knowledge where Mr. Korchma is directed to report for work on days other than Monday through Friday?
 - A. As far as I know -
 - Q. You don't know? A. I don't know.

53

Q. From the time that you first engaged a member of Local 456 under whatever contract you had at that time, to the present time, have you had a member of Local 456 in your employ?

A. Yes.

Q. So that if the regular employee whom you had was off sick or was on vacation, you had a replacement for him, is that correct? A. Yes.

They sent a-1 don't know how -1 don't know if the guy was sick for one day, I wouldn't know, if he, you know, if they sent somebody down there one day.

- Q. But you did testify on direct examination that you had two long-term employees? A. That's correct.
- Q. And how you had approximately three intermittent temporary employees, as you characterized them? A. That's correct.
- Q. Were those temporary employees to cover vacation periods or periods of absence of the regular employees? A. Yes.
 - Q. Correct? A. Yes.

MR. TRUNKES: I don't think Mr. Sheehan will dispute it but I think the record does show from June 29th until perhaps July 9th or so, that first week of July, there was no teamster on the payroll, between the expiration of the 1973 contract of June 30th until the execution of the present contract, sometime in early July, that short period.

BY MR. SHEEHAN:

- Q. Do you know that to be the fact? A. He was not on the payroll.
- Q. You know that to be the fact? A. Well, he was on the picket.
- Q. I am asking you, do you know that to be the fact?

 A. Do I know what to be the fact?
 - Q. What Mr. Trunkes just said? A. Yes.

I know that to be that he wasn't - he wasn't even on the job.

Q. I'm asking you if you know or if you are merely surmising?

MR. GOLOVENSKY: I object to this. What?

MR. TRUNKES: There are documents, the man received a layover letter and there is evidence after he executed a contract he gave his project manager, told him to hire, as a result Korchma was hired.

There was a hiatus of at least five, six or seven days when nobody was on the payroll.

That's what he testified to.

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56

Now, when he says no, it is a fact, he is the secretary-treasurer of the corporation.

- Q. Do you have the payroll books? A. Not with me.
- Q. Do you ever give any instructions to Mr. Korchma or his predecessor,Mr. Toran? A. Personally?
 - Q. Yes. A. No.
- Q. How often do you visit, in the past year, have you visited the job site in White Plains?

 A. In the past year, at least once every two weeks.

REDIRECT EXAMINATION

BY MR. GOLOVENSKY:

- Q. On this courthouse complex project, is Stevenson the general contractor?
 A. Yes.
 - Q. And does it have sub-contractors? A. Yes.
- Q. For example, does Stevenson have any employees who do the plastering work?

 A. As a subcontractor?
 - Q. No. Direct. A. No.
 - Q. They have a subcontractor? A. Yes.

- Q. For acoustical ceiling, and others? A. Acoustical ceiling, painting.
- Q. Now, are you also doing direct work on the project that you have employees working directly for you?

 A. Yes.
 - Q. So that it is typical in the sense of the general contractor does some of the functions and subs out others?

 A. Yes.
- Q. Now, concerning Stevenson work, how long is this job supposed to last until completion, from the beginning to the end?

The courthouse complex. A. Three years.

- Q. Now, over this three-year period, how much jockeying on the site or between sites, if you did not hire outside firms to do any of this, how much do you estimate there would be over a three-year period, on an average?
- A. Over a three-year period?

Maybe four weeks total.

Q. Four weeks total.

And how many hours a week would that average out to? A. How many hours a week?

Q. Right. .

57

58

In other words, if you were to engage a teamster to do this work, how many hours of work would you have for him over the three-year period, as an average?

You gave us a block, putting it all together. A. Well, we have thirty-five times four, thirty-five hours per week.

- Q. In other words, a forty hours into a hundred and fifty weeks, approximately an hour a week is what you are saying? A. Yes.
- Q. Now, you testified that when there is any moving to be done between sites or on the site, that you went to an outside firm, is that correct?

 A. Yes.
- Q. And can you tell us approximately how much you would be paying an outside firm to do these 140 hours of moving?

MR. SHEEHAN: I object to that as immaterial.

JUDGE SEFF: It is sheer speculation, I think.

MR. GOLOVENSKY: Well, I'm sorry, if I didn't make it clear, your Honor.

I think the witness testified he has used outside firms.

What I'm asking him is how much they cost, to get an approximate figure of what we are talking about.

JUDGE SEFF: If he knows.

Q. If you know. A. Well, it runs -I have just recently, we did some.

It cost us - a move, it cost us twenty-five hundred dollars for the move.

Q. And for a three-year project, can you estimate -

MR. SHEEHAN: I think this is speculative.

A. It would be no more than -

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MR. GOLOVENSKY: The job in question hasn't been completed, yet.

There is no way we can estimate - elicit this information.

Let me rephrase the question.

BY MR. GOLOVENSKY:

Q. How much have you spent so far on this job to the best of your recollection?

MR. SHEEHAN: I object to that as immaterial, your Honor.

JUDGE SEFF: Objection overruled.

A. We spent about \$5,000 on it.

Q. And what percentage of the job is completed? A. 93 per cent.

Q. 93 per cent? A. Yes.

Q. How much are you paying Mr. Korchma?

MR. SHEEHAN: I object to that as immaterial.

JUDGE SEFF: Overruled.

A. We are paying him - on straight time it is at least \$12,000 a year.

60 JUDGE SEFF: How much a year?

THE WITNESS: \$12,000.

Q. On straight time.

Is he required to be there whenever anyone is on the job? A. Yes.

- Q. So that if there are other workers there on overtime, he would be required to be there? A. Yes.
- Q. Now, can you estimate roughly what \$12,000 would yield in overtime?

 A. He is bringing he would he would probably be bringing home over 25,000.
 - Q. 25,000 a year? A. Yes.
 - Q. And three years would make 75,000? A. Yes.
 - Q. This heated trailer, do you have any idea how much that costs?
- A. The trailer with the phone and -
- Q. Right. A. And the heat, well, the trailer will run on a rental basis \$100 a month, and the phone is another \$100 a month.

That's 200. And the heat, maybe 50.

- Q. 250 a month? A. 250 a month for the heat for three or four months.
 - Q. Is that about 3,000 a year? A. Yes.
 - Q. Additional 9,000? · A. Yes.
 - Q. Now, you mentioned the phone, \$100.

Do you have any idea where \$100 in phone calls go? A. He's got a lot of additional message units.

- Q. Have you ever asked Mr. Korchma to make a phone call for Stevenson?

 A. No.
- Q. Have you ever directed anyone to ask him to make a phone call?
 A. No.
- Q. To your knowledge, has any phone call ever been made for Stevenson from that trailer? A. Not on our behalf, no.

- O. Do you have a phone on the site? A. We have a phone.
- Q. Is that in the trailer or someone else? A. That's in our office.
- BY MR. GOLOVENSKY: Is it correct that Korchma is paid, including straight time and overtime, approximate sum of \$25,000 a year? A. Yes.
 - Q. And is it not a fact that the project is to last about three years in total?A. Yes.
 - Q. And is 25,000 times three seventy-five thousand? A. Yes.
 - Q. And is it not a fact that the trailer with all its acoutrements costs approximately \$3,000 a year? A. Yes.
 - Q. And three thousand times three would make it an approximate figure of another nine thousand?

 A. That's correct.

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- Q. Now, I believe you testified that given and correct me if I'm mistaken that given the fact that this employee is on your payroll, this Korchma, it was determined that the company might try to utilize his services, is that correct? A. That's correct.
- Q. And what towards the end, under this theory, under this plan, what would you have him do? A. Well, we'd have we'd purchase truck and have him deliver material to our different jobs and run material around.
- Q. Is this precisely the same things that are covered by your contracts with the outside firms, about \$6,000? A. Pretty much so, yes.
- Q. In other words, given the fact that you had this employee costing about \$84,000, you thought that at least you could get him to save you the \$6,000 bill?
 - MR. SHEEHAN: I object to what he thought.
 - MR. GOLOVENSKY: On what ground?
 - MR. SHEEHAN: It's immaterial.
- Q. You discussed actively as a policy? A. We discussed if we have

to have this guy anywhere on the job sitting around, and we got to go out and get somebody else to pay them to bring the material to the job or to a different job, we might as well utilize this guy.

Q. Right.

Now, you say you've been with this company for many years?

A. Yes.

65

- Q. And you participate in contract negotiations with owners of a building?
 A. Yes.
- Q. If you had your druthers, your choice, would you normally elect, as a business decision, to spend \$85,000 on an employee when you can do it outside for six?

 A. I would do it outside.
- Q. And your testimony then is since you had the 85 already required you might as well try to save the six?

 A. That's correct.
- Q. Now, as a result of this decision, did you ever reach a decision
 that you would not lease the truck?
 A. Based on the information that we received, we decided not to lease the truck because we would have to put on another teamster.
- Q. For X thousands of dollars? A. For the rates that are in the agreement.
- Q. In other words, even though it's an easy business decision to save \$6,000, you never made that decision because your information was you didn't have the alternative?

 A. Right.
- Q. And that if you wanted to save the \$6,000 outside A. We would have to put on another teamster because that shop steward was not to drive the truck.
 - Q. Now, the information you received, what was the shop steward to do? You are paying him \$85,000?

Aren't you interested in what he is doing? Or it's costing you 85,000.

A. We were told that he is supposed to check the trucks that come on the job.

That's what he is supposed to do.

- Q. Check them for you? A. To see if they are teamster drivers, not for us.
 - Q. Well, do you care if they are teamster drivers? A. No.
- Q. And do you know whether these phone calls had anything to do with checking back with companies who were making deliveries?

 A. I do not.
 - Q. You don't know what those phone calls were? A. No.
 - Q. But it was considerably more than the standard rate of having a phone there?

 A. Yes.
 - Q. I think you said about \$100 a month? A. Yes.
 - Q. Do you know when you signed this latest contract, General Counsel Exhibit 8, after the picket, do you know whether you had to pay any retroactive pay to Korchma for the time he was out on the picket line?

A. I don't think so.

I seem to remember that I had told my people that he is not to be paid because he was on the picket.

- Q. After all, he wasn't in the trailer, right? A. Yes.
- Q. Now, you testified, and there was an exhibit introduced as to the last day of his employment, before the picketing, as June 29th, and the contract I believe you testified goes to June 30th. A. Yes.

67 That was a Saturday.

- Q. So that the 29th was the last working day under this contract?A. Yes.
 - Q. Is that correct? A. Yes.

MR. GOLOVENSKY: I have no further questions at this time.

JUDGE SEFF: Mr. Sheehan?

MR. TRUNKES: Your Honor, just one point.

The question and answer involved a word used - "jockeying."

I don't know whether you were or the board is familiar with the term.

I wonder if the witness would explain what that means.

JUDGE SEFF: Moving from place to place.

THE WITNESS: That's correct.

MR. TRUNKES: In other words, it doesn't require driving out on the public streets, is that correct?

THE WITNESS: Yes.

MR. TRUNKES: No further questions.

RECROSS-EXAMINATION

BY MR. SHEEHAN:

Q. Mr. Jovene, did you ever issue any instructions as to the use of the telephone? A. No.

Q. I believe you testified you never had a conversation with Mr. Korchma vourself? A. That's correct.

Q. You have, have you not, Mr. Jovene, had the same man to cover all of the construction sites that you had operating at any one time in Westchester County?

A. Talking about superintendent?

Q. No.

MR. GOLOVENSKY: I'm sorry, your Honor.

Q. About a representative of Local 456.

MR. GOLOVENSKY: Your Honor, could I have the question read back?

MR. SHEEHAN: I will reframe it.

Q. You haven't got a counterpart of Mr. Korchma at Grasslands, have you?

A. No.

Q. You haven't got a counterpart of him at Purchase, have you?

A. We haven't started that job.

Q. At Purchase? A. Right.

Q. Didn't you recently move equipment from White Plains to Grasslands? You don't know? A. I don't know.

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- Q. Now, when you gave these figures that your counselor asked you to compute, is that from your personal knowledge of your payroll or merely your estimate?

 A. It's my estimate.
- Q. Is that true also with respect to the charges for trucking; is that an estimate or is that actually from the A. Well, I know the \$2,500 bill, because I just signed it a week ago.
- Q. Who told you, as a representative of the union, that you could not have a truck without having another driver assigned to that truck? A. Our general superintendent.
- Q. Nobody from the union ever told you that? A. I had no direct contact with him.
 - Q. It was only your internal man? A. My general superintendent.
 - Q. Who is he? A. Anthony Knesich.
 - Q. Who was the project manager? A. What time?
 - Q. During the term of the contract that you had with 456 at White
- Plains? A. We had three project managers.

The first one was Frank Paratore.

- Q. He is the one who signed the second contract? A. That's correct.
- Q. And he had the authority to do so? A. That's correct.
- Q. And there was no interruption between the operations as far as Pickets are concerned in 1970, was there?

 A. No.

The only time that the pickets were there -

Q. I know.

70

But you had one contract in May of 1970 which you signed? A. Yes.

- Q. Then that contract ran out in June of 1970 and then Mr. Paratore resigned another contract effective July 1, 1970, is that correct?

 A. Yes.
- Q. That's the one here as General Counsel's Exhibit 2 in evidence; is that correct? A. Yes.
 - Q. Correct? A. Yes.

- 71. Q. And there was no interruption, there was no picketing, there was nothing? A. No.
 - Q. It was just in the beginning.

I thought it was - it may have been on the one in May, the first contract.

I'm not sure now.

- Q. Your testimony was that there was no interruption, there was no picketing, there was no nothing between the June 30th and July 1st contract of 1970, that is, the contract which expired on June 30th and the new contract that became effective July 1, 1970, is that correct?

 A. Yes.
- Q. Now, would you say that what you have testified to here, largely as to what somebody told you, as to what Mr. Korchma does or does not do was true also with respect to the representative you had on your payroll in 1970?
- MR. GOLOVENSKY: Your Honor, that's a compound sentence three times.

I'm not sure the witness should be asked to answer it.

MR. SHEEHAN: If the witness doesn't understand it, he should be allowed to say so.

72 MR. GOLOVENSKY: I am objecting to it because it's a compound sentence.

MR. TRUNKES: I also object to Mr. Sheehan assuming this year of 1970.

I believe the witness testified as a result of the contract he signed in 1971
he first hired a local 456 man and he does not recall hiring anybody under this 1970 contract.

MR. SHEEHAN: Maybe this witness' memory is poor because obviously he testified that the first contract he had was the one which was your Exhibit 2.

MR. TRUNKES: Right.

MR. SHEEHAN: We have, however, his signature on a prior document.

MR. TRUNKES: And he will - he also testified, your Honor, that he

does not recall anybody under - hiring anybody under that contract, to my recollection.

MR. GOLOVENSKY: And, your Honor, he also testified he knows there was picketing at the start of this thing, whether it is the first contract or the second.

JUDGE SEFF: I think the record will speak for itself.

I can't recall — it was my impression that the contract was signed as the result of the pressure created by the picket line, and there were two such picket

73 lines and in each instance a contract was signed after the heat was turned off.

BY MR. SHEEHAN:

- Q. Was there picketing in May of 1970 A. I'm not sure of -
- O. You don't know? A. I know there was a picket -
- Q. I don't want you to speculate now.

JUDGE SEFF: Let the witness answer the question.

MR. SHEEHAN: I don't mean to interrup him.

A. I know there was picketing in the beginning when we - now, I'm not sure if it was this May contract or the June contract.

It was only — we signed the first one — maybe that's why I forgot it, May 20th, it expired June 30th.

- Q. That's the only contract you ever signed with Local 456?
- A. That's the only -
 - Q. In other words, you personally, that is the only contract you signed?
- A. Yes, our operation.
 - Q. No, I am talking about the individual in your organization.
- A. What difference does that make?
- 74 Q. Don't argue with me.

Just answer the question. A. I'm saying that this was dated May 20th. The contract expired June 30th.

- Q. That's right. A. Okay.
- Q. That's correct.

And a new contract was immediately executed thereafter?

MR. GOLOVENSKY: Objection.

There is no information as to when this was executed.

MR. SHEEHAN: Here is a man, the secretary-treasurer of the charging party and I have a right to probe his recollection.

And I shouldn't be interrupted by counsel in my opinion.

BY MR. SHEEHAN:

- Q. Was that contract, General Counsel's 2 in evidence, signed on or about July 1, 1970? A. '71.
- Q. Is there anything in the document that says '71? A. I don't know.

I'll have to look at it.

- Q. Would you take a look at it? A. No.
- Q. But the contract that was made, Respondent's Exhibit 1, was signed by you, was dated as to the date it was executed?

 A. May.
 - Q. Of 1970? A. Yes.
 - Q. Did you have any conversation with anyone representing Local 456 between July 1, 1970 and September 1971, when you say that the general counsel's Exhibit 2 was executed?

 A. Me personally?
 - Q. Yes. A. I don't think so. We had a luncheon of all the union delegates.

I don't know if the teamsters were there. That was when we were first starting the job.

- Q. You say you don't recall the event A. No.
- Q. Excuse me.

May I have that contract?

MR. SHEEHAN: At this time, I asked your Honor before, that I could

substitute a photocopy of Respondent's Exhibit 1 for the original and have that marked.

JUDGE SEFF: You may do so.

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MR. GOLOVENSKY: Your Honor, I would like to ask counsel at this time, since it is his document, which was admitted without objection.

If counsel can supply us with information as to when that document was drafted, because as counsel well knows, in the construction industry you can have a settlement July 1, 1970 and not see the drafted contract for six months, eight months, a year afterwards.

MR. SHEEHAN: I never did business that way.

MR. GOLOVENSKY: Well, the teamsters do.

MR. SHEEHAN: I don't think so, not my client. I can't engage in your stipulation.

MR. GOLOVENSKY: I will be happy to be corrected. But can you tell us when that document was drafted rather than confuse the witness as to a year's gap?

MR. SHEEHAN: I'm not desirous of getting - of confusing the witness. I was just trying to get the record straight as to the exhibit.

If you wish me to volunteer some information as counsel to the union, I will do that.

But I would first like to have that marked.

MR. GOLOVENSKY: If counsel has it within his knowledge, I don't know if he does, but if he does have in his knowledge that this document was dated and effective July 1st and was drafted four months later or three months later, and then he is asking the witness, how come you signed in '71, when it is dated '70, I think that information should be divulged.

JUDGE SEFF: If he has it.

MR. SHEEHAN: Merely as counsel, sir, to the union at that time, and for some years prior thereto, I have a specific recollection of the contract that

was negotiated to become effective on July 1, 1970.

And I would say from my knowledge that the contract was negotiated, ratified and prepared for execution prior to July 1, 1970.

MR. GOLOVENSKY: I thank counsel.

MR. SHEEHAN: I have no further questions, sir.

MR. TRUNKES: I would like to ask the witness a question.

I might make a statement for the record that general counsel had no knowledge that a contract had been signed as respondent's exhibit 1.

We obviously relied on the witness and the witness obviously relied – did not inform general counsel.

BY MR. TRUNKES:

Q. Is that correct? A. Yes.

MR. TRUNKES: I don't see any reason, your Honor, why the witness would hide anything.

It is obvious he signed it and he admits it, et cetera.

BY MR. TRUNKES:

Q. But if you can remember, Mr. Jovene, the original contract, Respondent's Exhibit 1, as Mr. Sheehan introduced, has your signature dated May 20, 1970.

Now, was that contract the one signed as a result of the picketing of the respondent, or was this signed without picketing, voluntarily, negotiations, or what?

A. To my recollection, this was signed without the picketing, the May one.

Q. Without the picketing

Was this signed as a result of your joining the association or

A. Well, we -

Q. You were in the BTEA? A. We were in the BTEA.

Q. And BTEA as I understand your testimony, had contractual relationships with the respondent?

A. That's right.

- Q. As a result of your membership, you signed it? A. Yes.
- Q. In May without any trouble, picketing? A. Without any trouble.
 - Q. Or any compulsion or pressures, anything, right?

According to the contract, it expired on June 30th of that year, meaning it was only in effect approximately six weeks, okay?

A. That's correct.

Q. Now, the second contract we have is the contract dated effective July 1, 1970 to June 30, 1973.

Now, that contract, if I recall correctly, you testified was signed as a result of picketing by Local 456 and around September of 1971, is that correct?

Q. Now, the question that I would like to clear up, sir, is what happened between the expiration of respondent's Exhibit 1, the contract that expired June 30, 1970, until September, when you signed – of '71, when you signed a contract after picketing?

What was the relationship for that one year plus?

There was a gap of July 1st to September something? A. I don't know.

I don't know what happened between that time. We started – JUDGE SEFF: You are referring to a paper.

Please identify the paper.

79

A. This is just my notes.

I wanted to find out when we started the actual physical construction, your Honor, on the job.

It was March 19, 1970, that we started on site work.

Now, what was happening on that job, we had excavation and we had piles to drive.

So I can only think that we had no trouble with the teamsters in March of 1970 because we weren't doing our work.

We were going to do our own concrete work and our own masonry work.

We had subbed out the excavation and the pile work.

So that during that time - it took a year to get all the excavation and the pile work completed.

We weren't asked to sign another contract.

- Q. Now, March 1970, the project began, right? A. Yes.
- Q. But in May of 1970 you signed a contract with respondent.

Did you have any employees on the job site at that time? A. Only our superintendent.

Q. Okay.

81

And you didn't actually start working with your employees until when?

A. Well, it was probably at least eight months up to a year.

- Q. 1971? A. Yes.
- Q. So the signing of the first contract, respondent's exhibit 1 that Mr. Sheehan introduced that you signed, you didn't have anybody in the payroll?

 A. That's right.
- Q. Now, I think you had a document originally when you testified telling us when the first teamster man was hired by you? A. Yes.
 - Q. Now, what was that date again, to refresh my memory?
- A. September 21, 1971.
 - Q. 1971? A. Correct.
- Q. And prior to then you had no member of the teamsters, no employees represented by the teamsters, is that correct? A. That's correct.
- Q. So the first contract that Mr. Sheehan introduced from May until June 30th there were no employees? A. That's correct.
 - Q. And when that contract elapsed, you didn't renegotiate or execute another one until you got employees, is that correct? A. Until they started with the pickets.
 - Q. Which was when your employees first came on in September 1971?

 A. Yes.

MR. TRUNKES: I think that explains it to my satisfaction, your Honor.

JUDGE SEFF: Any further questions?

MR. SHEEHAN: No further questions.

MR. GOLOVENSKY: No further questions, your Honor.

JUDGE SEFF: If there are no further questions you are excused.

Thank you for your testimony.

(Witness excused.)

101

ANTHONY KNESICH

called as a witness, having been first duly sworn, was examined and testified as follows:

JUDGE SEFF: State your name, please.

104

DIRECT EXAMINATION

BY MR. TRUNKES:

Q. Would you state your full name, please? A. Anthony Knesich.

MR. GOLOVENSKY: For the record, your Honor, I think your ruling was that others be sequestered. I would withdraw my motion as to others in light of your ruling that Mr. Korchma may stay.

JUDGE SEFF: Proceed.

BY MR. TRUNKES:

- Q. What's your address, Mr. Knesich? A. 175 Fulton Avenue, Hempstead. That's the business address.
- Q. And that's the business address of J.R. Stevenson, is that correct?A. Yes.
- Q. What's your occupation, sir? A. Right now I am the general supervisor for the firm.

JUDGE SEFF: I can't hear you, sir.

THE WITNESS: I'm the general super for the firm.

- Q. How long have you held that occupation or that position?A. About a year and a half.
- Q. And prior to that, what was your position? A. Prior to that, for a short while, I was the project manager on the Westchester County Court House, and prior to that I was the concrete super for the company on that job, also.
 - Q. How long have you been employed by J.R. Stevenson? A. It's going to be seven years in February, this coming February.
 - Q. And what do you actually do at present? A. The present time, I'm in charge of all the outside work, in other words, of all our jobs, men, equipment, and so on and so forth.
 - Q. As part of your job, do you visit the job sites? A. Yes, sir, I do.
 - Q. When did you first start working or have you worked at the White Plains I think you mentioned you worked at the White Plains courthouse complex. A. Yes. I started in October of 1970. In other words, the job started in March and I didn't go to the job until October.
 - Q. Of 1970 or 1971? A. Well, it's either 1970 or 1971. I know it was in a we started the job in March and that following October I started on that job.
- Q. Now, at the time you started the job, was there a contract in effect between the respondent and J.R. Stevenson? A. When I came on the job, the shop steward for the Teamsters was already employed by the company.
 - Q. Now, in other words, he was there before you? A. Yes, sir.
 - Q. And who was that? A. Victor Toran.
 - Q. D-o-r-a-n? A. I believe it is T, if I'm not mistaken.

MR. TRUNKES: Is it possible we can get his correct spelling?

MR. SHEEHAN: I will check it out.

THE WITNESS: I think it's Toran, T-o-r-a-n.

Q. Mr. Toran was on the job, you say? A. Yes, sir.

Q. And did you observe his duties at that time?

By the way, what was your position at the time you started working there?

A. When I started working there, I was concrete super on the job.

- Q. Now, what were your duties as concrete supervisor? A. I was in charge of the concrete construction on that job.
- Q. How many employees of J.R. Stevenson were under your direct supervision?

 A. At the time that I arrived there?
 - Q. Yes, sir. A. It was very few. It was only a couple of laborers and one or two carpenters.
 - Q. And Mr. Toran? A. Right, Mr. Toran and the master mechanic, actually.
 - O. Was Mr. Toran under your supervision? A. Yes, sir.
 - Q. Were all the employees there under your supervision? A. Yes.
 - Q. And a project manager if you had one? A. No, the project manager, actually, is over the concrete super.
 - Q. I see. A. But then naturally we work hand in hand. We come from the same company, therefore, you know -
 - O. Okay.

Now, you recall seeing Mr. Toran on the job site? A. Yes, sir.

- Q. And did you observe what he was doing there? A. Yes. He's he used to check the trucks that were making deliveries, and that's it.
- Q. Where did he generally stay on the job site if he wasn't checking trucks?

 A. In the trailer or sometimes he walked around the job.
- Q. Now, this is the trailer that was supplied by who? A. By J. R. Stevenson to him.
 - Q. Now, this trailer had a telephone? A. Yes, sir.
 - Q. And did you authorize him to make any telephone calls for your company?

 A. No, not to my knowledge, no.
 - Q. Did there come a time after you began your employment at White

Plains when a – your employers discussed with you the possibility of having Mr. Toran perform some truck driving work?

A. Yes, there was.

Q. Would you describe approximately when and who said what about what? A. A couple of months after we started the job, we had another job at that time in White Plains, and we are trying to — we wanted to move some from that job to the job that I was on.

And we had decided through the office we were going to rent a truck and ask - tell the Teamsters shop steward to drive that truck at that time.

We did that. We rented the truck. And then when we told him he had to make this pickup -

109 Q. Hold it a second.

110

When you say "we," who is "we" who told him what? Who actually spoke to him?

A. Me and Frank Paratore.

- Q. Who was Frank Paratore? A. The project manager on the job at that time.
 - Q. Both of you spoke to Mr. Toran? A. Yes, sir.
- Q. Do you recall what you said? A. Yes, we told him we wanted to make a move from one job to the other.
- Q. Who made that statement, you or Mr. Paratore? A. Paratore. I was present there. And we had already rented the truck because in all honesty we didn't think that we were going to have a problem.

We had the truck on the job. And when we told him, he refused to drive unless we hired another man to cover the job.

- Q. Do you recall what he said? A. He said that he would drive the truck if we hired another teamster to stay on the job to check the trucks coming in and out.
- Q. Now, as a result of that conversation, did you report back to your employer?
 A. I reported back to the office and they naturally blew their mind and told me nothing doing.

- Q. And did you fire someone else, another teamster? A. No, we did not.
 - Q. Did Mr. Toran do any driving on that particular job? A. No.
- Q. How did you take care of that particular problem at that time?

 A. What we did then was we went to an outside outfit with a Teamster driver and, you know, he did our pickups and deliveries.
- Q. Now, Mr. Toran, according to prior testimony, was eventually replaced by Mr. Korchma, is that correct? A. Yes. I believe he retired and he was replaced.
 - Q. Did you see Mr. Korchma working on the job site? A. Yes.
- Q. And would you describe what you saw him do? A. He was checking the trucks coming in and out of the job, sat in the trailer and walked around the job.
 - Q. Did you authorize him to make any telephone calls for you?
- A. No. Not to my knowledge.

111

- Q. Well, you yourself didn't? A. Right.
- Q. Now, when did you become you say you were project manager for a short time? A. Yes.
- Q. Was that during the time Mr. Toran was shop steward or Mr. Korchma? A. It was actually during the time that Toran retired and the new shop steward came into the project.
 - Q. You were the project manager at that time, right? A. Yes.
- Q. And I believe you stated when did you become the general superintendent, do you recall the month and the year? A. It was last June.
 - Q. June of 1973 or 2? A. 1972
- Q. So it is approximately a year and a half, December would make it a year and a half, right? A. Right.
 - Q. So you were superintendent at that time that the incidents occurred,

in June and July of this year occurred, is that correct? A. Right.

- Q. And did you after you became general superintendent, you stated that your duties had you covering various job sites? A. Yes.
- Q. How many job sites in June or July did the company have for you to cover?

 A. It was actually three jobs at that time.
 - Q. How much time during the course of a week did you actually spend at the job site at the White Plains Court House complex? A. It all depends. Sometimes I spend several hours or the full day, maybe two days a week total.
 - Q. Maybe 16 of the 40 hours was spent there? A. Yes.
 - Q. And it could be split up, either a whole day or so or divided among?A. Right.
 - Q. During the time you were superintendent visiting this job site, did you see Mr. Korchma do any work for J.R. Stevenson?

 A. No.
 - Q. What did you see him do while he was while you were general supervisor?

 A. Like I said, he checked the trucks coming out, coming in and out of the job, if they were Teamster drivers, and that's it.
 - Q. Did you yourself ever speak to Mr. Korchma about anything?
 A. Well, when on the job, I mean, naturally we talked to each other in generalities. That's about it.
- MR. TRUNKES: I have no further questions, your Honor.

DIRECT EXAMINATION

BY MR. GOLOVENSKY

Q. Yes.

Tell us what this checking the trucks means? A. In other words, if a truck comes on the job to make a delivery, he goes up to the driver, he asks him to show him his card, in other words, he wants, he checks whether the man is a Teamster member.

- Q. Did you ever observe that he found that someone wasn't a Teamster member?

 A. Yes, I have.
 - Q. What happens then? A. Well -
- MR. SHEEHAN: It is outside the issues in the complaint.

JUDGE SEFF: Overruled.

A. It happened many times, and he naturally came to - if I was there, he spoke to me and I'm sure he spoke to some of the other fellows on the job and made us aware of it and, you know, told us not to let it happen again or to try to talk to these suppliers to furnish a teamster driver to make the deliveries.

Q. And he was speaking in the name of the union?

MR. SHEEHAN: I object to that.

Q. When he said not to do it -

JUDGE SEFF: Wait a minute.

On what ground?

MR. SHEEHAN: On the ground there is no testimony that Mr. Toran was authorized to speak in behalf of the union.

JUDGE SEFF: Objection overruled.

A. Well, I assumed that the man represented his union and, therefore, he, you know, actually — he was protecting his own job, his own group of members that he belongs to.

MR. SHEEHAN: I move to strike the answer.

JUDGE SEFF: Motion denied.

BY MR. GOLOVENSKY:

- Q. You didn't ask Mr. Toran and Mr. Korchma as an employee of yours to take a survey because you were interested in knowing whether the truck was coming on with Teamsters, did you? A. No.
 - Q. This was being done in the capacity of shop steward? A. Right.
 - Q. Now, you mention that you go to outside truckers to do your hauling

or transportation.

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What kind of hauting is that? What do they do? A. Well, most of the times we move material from one job to another. Or if we are moving material from one job to the yard for storage.

Q. Within the yard.

Now, how big are these — did you ever observe these outside trucking firms doing this? A. Yes.

- Q. How big a truck? I'm trying to understand what's going on here.

 How big a truck? A. It's an open bed most of the time we use an open-bed trailer. It's approximately 30 feet long, 20 or 30 feet long.
- Q. Are there also ever occasions when you have minor items, I mean that you don't need a 30 or 20 foot trailer, you need a cab or I don't know what you would call it, something sent somewhere on the job or something

like that? A. Yes. It has happened a few times where I moved a small amount of material from one job to another.

- Q. When you say small amount, could you describe in terms of what kind of a truck you are talking about? A. Talking about a small pickup truck.
- Q. And what kind of things? A. Well, equipment that you will use without with our type of construction, and small amounts of lumber.
 - Q. Now, would you call in is this a frequent thing? A. No.
 - Q. Do you use the outside truckers for that as well? A. No.
- Q. What do you do with that? A. Well, most of the times is that I try to set up, when I make my moves and we go to these outside truckers, that I have definitely one full load and maybe more than one for that day, you know.
 - Q. Do you pay by the day or by the load? A. By the day.
 - Q. So if you can get more than one it's more economical? A. Right.
 - Q. And here what happens you have now minor things pick-up type

117 things? A. Yes.

Q. And you say it's not infrequent. But how frequent is it, can you estimate, or can you tell us on the job?

A. I would say probably during the length of the job, it probably, if I was to average it out, it may be happened once every two or three weeks.

In other words, it wasn't a thing that was done continuously every day.

Q. How many times over a year would you say?

A. Oh, about twelve, fourteen times.

Q. Okay.

Now, how do you get this done? Let me ask you something, to go back for a minute.

When you were present at the conversation with Mr. Toran, and you spoke about renting a truck, what kind of a truck were you going to rent or rented?

A. We rented a truck from Hertz.

- Q. What size? A. It was a rack-type truck. It was approximately 15 foot or, I don't know.
- Q. And was your comemplation to do this and not save up big loads? Was this to replace the outside guy is what I am trying to get at.
- A. Yes, in a way it was because naturally when you would rent an outside firm and you are renting him by the day, and you have a fixed fee, and by doing it ourselves, it was a matter of maybe two hours.
 - Q. And how many hours in your discussions in planning, how many hours did you plan that Mr. Toran would actually have to drive this rented truck?

 A. It was approximately a four to five hours.
 - Q. Four to five hours what? A. For that one day.
 - Q. And how often would that day, can you give me a weekly average?
 - A. That it would have happened if I would have went with him?
 - Q. Yes. A. I would say it probably would average out to one hour for the length of the job, the duration of the job.

- Q. In other words, an hour a week? A. An hour a week, yes.
- Q. And Mr. Toran refused? A. Refused on the grounds that we did not want to put on another teamster to cover the job.
- Q. Now, not being able to use the steward and taking aside a minute these outside jobs, these big trailer jobs, what do you do with this equipment, this other stuff you were talking about with the pickup?

 A. Well, some-

times I get caught in a pinch where something breaks down on another job or it is required within overnight, and I make these moves to accommodate the other job.

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- Q. How do you make the move? A. Many times it is really bad because I don't give enough notice. But like I said, it's a very short time. Just get a telephone call and you have to react.
- Q. So who does it? A. Most of the times those calls come to me and I in turn inform the different jobs and tell them, look, this has to be done, and that's it.
- Q. And it is transported in a truck or by hand or how does this work?
 A. Well, when I moved the small equipment from job to job, I —
- Q. From job to job, yes. A. From job to job, and specially at the Westchester County Court House, what I done, I have a laborer working for us that has a small pickup truck and I've asked him to, you know, help us out and he has done this for us.
- Q. And how often? A. Like I very few times, over the period. Naturally I'm talking about over the period of the whole year.
- Q. Is he paid for this or is this part of his A. I pay him his expenses as far as gas and tolls and that's it.
 - Q. Gas and tolls. A. And once or twice he had repairs, you know, the damage was done to his pickup because of doing the favor for me. I naturally reimbursed him.
 - Q. How old is this pickup of his, do you happen to know? A. Not

offhand. I believe it's maybe two or three or four years old.

- Q. Do you know how he happened to get it, did the company have anything to do with that?

 A. No.
- Q. Do you know A. The store that I get is that at one time he used to do landscaping on the side.
 - Q. He had it for his own reasons? A. Yes.
- Q. Do you know who or whom Mr. Toran in the past and Mr. Korchma at present call for the ninety to a hundred dollars a month?

 A. No, I don't.
- Q. And when you were project manager, you were paying ninety to a hundred dollars per telephone and none of that was for the company, you know none of what those calls were?

 A. No, I don't know. And, you
- know, when you've run a project like that, you have a lot of a lot of other things on your mind, you know, these things even if the office does scream and yell about it, you just
 - Q. Do you have a phone on the job when you were project manager?A. Yes, sir.
 - Q. And where was that? A. In my office.
 - Q. And did you use that phone? A. I always did, yes.
 - Q. How many phones did you have? A. We had at the time that I was there we only had one.
 - Q. And now? A. I believe it is still only one.
 - O. Still one.

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And do you have anything to do with the steward trailer, that's what I'm trying to get at?

A. No, no. I maybe used a phone once over the long period of time. It so happened to be there and it was convenient for me too go in there instead of walking somewhere else and I used their phone.

Q. How many times have you used the phone? I'm trying to get at
whose phone this is? A. I think over the three years I have been on

that job, if I used that phone more than six times, it's a lot.

Q. Okay.

Who keeps that trailer in order, do you know? A. He does.

Q. You mentioned walking around the job.

What do you see him doing when he walks around the job? A. Well, he actually, like I said, his duties are to — I mean from what I understand, his job is to check the trucks coming in and out of the job. And when I say walking, he is just plain walking around the job, waiting for something to happen I guess or a truck to come up.

Q. Concerning Mr. Toran or Mr. Korchma, from your observations, can you tell us how many hours a day he sat in his trailer total, if you add it up, you know, just an estimate?

JUDGE SEFF: If you know.

A. I really couldn't pin it down to, you know, like -I don't think. I really don't think I could give an honest answer.

Q. Did he do anything else, to your knowledge and observation other than sit in the trailer and use the phone, check drivers coming in and then walk around the job?

A. No.

Q. Did he have any function, company assignment concerning walking around the job?

A. No, not to my knowledge.

Q. Did he report to you? Did you ask him to report to you or to anyone else in the company as to any observations he was asked to make?

A. No.

Q. Was he under your supervision when you were project manager?

A. Yes. I would have to say he was.

Q. Did you give him instructions? A. Well, I did not for the simple reason that if you really realize I started the job as a concrete super and then I became a project manager. In other words, his ground rules were basically established.

- Q. And what were they? A. In other words, he used to check the trucks coming in and out.
- Q. Was he your employee is what I am trying to get at? A. Yea, he was.
 - Q. Not on the payroll.

Did he do anything for you? A. No, he did not.

- Q. He was this entity there? A. Right.
- MR. GOLOVENSKY: I have no further questions, your Honor.

JUDGE SEFF: Cross, Mr. Sheehan.

MR. SHEEHAN: Yes, sir.

CROSS-EXAMINATION

BY MR. SHEEHAN:

- Q. Did you ever ask Mr. Korchma to drive a truck? A. Not that I can remember.
 - Q. I take it then he never refused any such order? A. That's true.
- Q. Did he ever make any request of you that he be given a truck to make these moves from one job site to another?

 A. Yes, he did.
- Q. And when for the first time did he make such a request? A. A few months ago.
- Q. When was the first time he made it? A. Very recently, I would say maybe two and a half months ago, the most.
- Q. And what did you say? A. My reply was no. I said the company had already made up their mind and, therefore, it was no.
- Q. Are you acquainted with the terms of the contract that Stevenson had with Local 456? A. Excuse me?
- Q. Are you acquainted with the terms of the contract that Local 456 had with Stevenson? A. I know we had a signed agreement with them.
 - Q. My question is, are you acquainted with the terms of that contract?
 A. Not in its entirety.

Q. As you acquainted with the fact that you were to have supplied transportation to Mr. Korchma?

MR. GOLOVENSKY: Objection.

MR. SHEEHAN: I think this is cross.

JUDGE SEFF: What ground?

MR. GOLOVENSKY: That's not what the contract says.

JUDGE SEFF: What does it say?

MR. SHEEHAN: I'm reading it.

MR. GOLOVENSKY: Are you asking me, your Honor?

JUDGE SEFF: Yes, I am.

MR. GOLOVENSKY: Supplied with a vehicle for means of transportation.

JUDGE SEFF: I am - in simple language, what does that mean?

MR. GOLOVENSKY: It means some kind of a car or other conveyance.

MR. SHEEHAN: Or a pickup truck?

MR. GOLOVENSKY: It doesn't mean that necessarily.

126 JUDGE SEFF: It could, though, couldn't it?

MR. GOLOVENSKY: Sure. It could mean a trailer truck, too.

BY MR. SHEEHAN:

Q. You never supplied that? A. No.

Q. During the period that you have been superintendent you had more than one job site in Westchester County?

A. When I was the superintendent on the job, I only ran U. W. Westchester County Court House.

If there were other jobs the company was doing, I had nothing to do with it.

Q. I thought you said you had general supervision of at least three jobs in any one time? A. Well, you asked me while I was a superintendent and that's why I answered your question that way.

Q. You would - you have been superintendent since June of 1972?
 A. Yes, as a general superintendent, I do have other jobs.

- Q. And how many other jobs have there been in Westchester County since that date?

 A. Just one other one.
- Q. Is that at Grasslands or Purchase? A. No, just the Valhalla job, which is Grasslands.
- 127. Q. That's another construction site? A. Yes.
 - Q. And you knew that the steward under the the 456 steward covered that job as well as the White Plains job?

 A. No, I did not know that. I wasn't sure —
 - Q. You weren't acquainted with the terms of the contract? A. I read a lot of contracts. If I had to remember everything written on all of them —
 - Q. I didn't ask you about other contracts. I'm asking you about the456 contract. A. I wasn't fully acquainted with it.
 - Q. Do I take it you never read it? A. I did read it once because I had to sign the last one but
 - Q. That's the one in 1973? A. Yes, I believe that's the one I signed.
 - Q. Did you read the one that was in existence at the time you went on the job in October of 1970?

 A. No, I did not but I was told of some of the conditions that we had to that we had to abide to at that time.
 - Q. Did you ever read the contract when you were the project manager at White Plains?

 A. No, I don't recall. I don't remember really.
- Q. Now, have you moved material from White Plains to Jersey, to another job site? A. Yes, I have.
 - Q. And did you ask Mr. Korchma to do that? A. No, I do not. I don't remember.
 - Q. Now, you mentioned that you had a laborer who uses his own equipment. A. Right. His own truck.
 - Q. His own truck. A. Panel truck, yes.
 - ·Q. He works under the laborers contract, doesn't he? A. Right.

- Q. Laborers contract doesn't provide for chauffeurs, does it? A. Not that I know of.
- Q. It doesn't provide for the transportation or moving of equipment from one job site to another, does it? A. Nope.
 - Q. But the 456 contract does, doesn't it? A. Yes, I guess it does.
- Q. But you didn't ask Mr. Korchma to do that? A. Well, I didn't ask him because we were denied that at one time prior and we never pursued it further.
- Q. Outside of Mr. Toran who you said has retired, did any official of the union ever tell you that the man who you had from 456 in your employ could not drive equipment?

 A. No.
- Q. Did you ever protest to any official of Local 456 that action that you say Mr. Toran took?

MR. GOLOVENSKY: This witness?

MR. SHEEHAN: I'm asking the witness a question.

THE WITNESS: Would you repeat that question, please.

BY MR. SHEEHAN:

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- Q. Did you ever protest to any official of Local 456 the action which you say Toran took sometime when you were project manager about operating equipment? "A. No. I did not.
- Q. You knew where the union office was, didn't you? A. I just had spoken to Chip one time or twice on the phone.
- Q. And in addition to that, didn't you know and hadn't you seen union representatives on the job site in White Plains?

 A. Not that I remember. There are a lot of people that come in and out. You know, you have your mind on other work.
- Q. You never recall having seen any business representative of the union at the White Plains complex?

 A. No, I don't recall having seen any.
- 130 Q. You knew the telephone number of the union, didn't you?

- A. Yes, I had that.
- Q. Did you ever check with the builders Institute as to whether or not a man in the position of Mr. Korchma was obligated to drive a truck?

 A. No.
- Q. That was an employer association that negotiated in your behalf, isn't that correct?

 A. Yes.
 - Q. What? A. Yes.
- Q. And do you know what that association negotiated as far as a job steward is concerned for construction purposes?

 A. No, I don't.

131 BY MR. SHEEHAN:

- Q. Do you know if the Builders Institute has a contract with Local456? A. I don't know.
- Q. Did you ever inquire of the Builders Institue whether they had such a contract? A. No.
- Q. Did you ever inquire of the Building Trades Employers Association whether they had a contract with Local 456 at any time from 1970 to date?
- 132 A. No. I never did.
 - Q. Did you ever protest to the to either of these associations the fact that Mr. Toran refused to drive a truck for you? Did you ever protest? A. No.
 - Q. You were aware at all times, were you not, that your company was a member of either the BTEA or the Builders Institute? A. Well, I was aware that we belonged to some association, and then at a later date I found out that these questions were the two that we belonged to at that time.
 - Q. Did you ever attend meetings of that association? A. No.
 - Q. Not even of the ten dinner meetings that are free? A. Sometimes those, when Chippy brought the tickets.
 - Q. Was Mr. Korchma ever told by you not to report to work? A. I

believe I did that once when - yes, I believe I did once.

- Q. When did you give him such instructions? A. I think it was over one of the holidays where we only worked carpenters and laborers.
- Q. Outside of that one occasion, did you ever instruct him not to report for work?

 A. No, not that I recollect.
- Q. And did he report each and every day that he was assigned to work?

 A. Will you repeat that, please?
 - Q. Did he report for work each and every day that he was assigned to work?A. Yes, I believe he did.
 - Q. Do you have a timekeeper on the job? A. Yes.
 - Q. And oes the timekeeper take the time of people who work under your supervision?

 A. Yes.
 - Q. And did the timekeeper report his times, starting time and the finishing time?

 A. Right.
 - Q. Did you ever challenge those times? A. Yes, I had.
 - Q. Did you ever challenge him to Local 456? A. No. I went directly to the man. In other words, it wasn't really Albert. It was Vic Toran.
 - Q. I'm talking about Korchma now because he has been there the last 18 months or so.

 A. No, not him.
 - Q. So you at no time ever protested any time entries that the timekeeper reported to your company as time worked by Mr. Korchma?
- 134 A. No, not to him.
 - Q. And you never protested to Mr. Korchma the time that he had reported having worked to him directly?

 A. No, not to him.
 - Q. Now, I just want to press your recollection.

With respect to the time that Mr. Korchma first reported to you that he should have a truck on to move equipment, I just want to press your recollection. MR. GOLVENSKY: Objection. That's not the testimony of this witness, that he should have a truck to move. That's the issue we got in, your Honor will recall.

BY MR. SHEEHAN:

Q. All right.

Did he say he should have a truck to move the equipment? A. What he had said was we should get the truck so we can make moves from the job to another job.

- Q. Didn't he protest the fact that you were using a laborer to do his work?
 A. Yes, he did.
- Q. Now, you knew Mr. Korchma had been in the construction business for about 35 or 40 years before he went to work for you?

 A. I assume so, yes.
- 135 Q. You gathered that from an interview with him at the time he came to work? A. Well, actually he wasn't interviewed. He was sent by his delegate to the job.
 - Q. I understand. A. And naturally at that time, you know, we had one man before, and he was put on.
 - Q. Well, you gathered at the time he or shortly after he first started to work for you that he had worked for other contractors in Westchester County?

 A. I didn't know that. I though he could have been no, I didn't know.
 - Q. Didn't he ever say to you or did it ever come to your attention that he worked as a steward for another contractor in Westchester County?

MR. TRUNKES: Your Honor, I object. I don't see the relevancy.

MR. GOLOVENSKY: I don't, either.

JUDGE SEFF: I don't. either.

BY MR. SHEEHAN:

Q. When you testify about the telephone, did he ever request that the telephone be locked?

A. Did he ever request to me whether the telephone

could be locked?

- Q. To you or to your knowledge. A. No, but I can say this, when I was on that job at all times I always said that all phones should be locked because, you know, we never know who is going to use them.
- Q. My question is, did Korchma ever make such a request of you?
 A. No.
 - Q. Did you ever lock the phone? A. No.
- Q. But you did say when you were the project manager you said that they should be locked? A. Right.
- Q. What, if anything, did you do to implement your decision?

 A. Well, I was, as a project manager, I was only there very shortly and then I started I end up out on the road and I only went there once or twice a week.
- Q. But you had authority to lock the phones if you so desired, is that correct?A. Right.
 - Q. But you never did so? A. No, I did not.
- Q. Did you ever protest to Mr. Korchma the amount of the telephone bill that was experienced on the telephone that he used?

 A. No, I protested that to my people.

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BY MR. SHEEHAN:

- Q. Did you ever protest to Mr. Korchma the amount of the telephone bill that was experienced in the trailer telephone?

 A. Not directly to him.
- Q. When you say "not directly," you imply it was done indirectly?

 A. Because I have other men on the job who are running the job and they are all day long there. And, therefore, my complaint was to them, not to—
- Q. Did you ever protest to any official of the union about the telephone bill?

 A. No.

- Q. So this date, to your knowledge, the union was never informed of any alleged overcharges or alleged overcharges on the telephone, is that correct?A. Not that I know of.
 - Q. The union's office, you knew where that was located, didn't you?
- A. Well, the information was given to me, yes.
 - Q. And how far is that from the White Plains complex? A. I really don't know. The times I spoke to them it was always over the phone.
 - Q. You had no trouble reaching the union office any time you wanted?A. No.
 - Q. Open every day in the week, wasn't it, every business day in the week?A. Well, every time I called I got someone.
 - Q. But at no time in those many calls that you made to the union did you ever protest any charges that the telephone had resulted into the company?

 A. No.
 - MR. SHEEHAN: No further questions.
 - MR. GOLOVENSKY: I have a few, your Honor.

REDIRECT EXAMINATION

BY MR. GOLOVENSKY:

- Q. This request which we are going to go into concerning Mr. Korchma asking for a means of transportation, did that happen after the picketing or before?

 A. Yes. It happened after.
- Q. Do you know if it happened after the featherbedding charge was filed? A. I really don't know.
- Q. When was the picketing? A. It was back sometimes in the summer months. I don't remember exactly.
 - Q. Do you remember whether it was in the beginning of July?
 - A. I believe it was in the mid middle.
 - Q. in July? A. I believe was June, July, not exactly the date.
 - Q. Was it nearly was it near July 4th? A. Could have been.

- Q. Can you pin as best you can when Mr. Korchma approached you about the means of transportation? We are now the end of November.
- A. I believe it was around the end of September, the beginning of October.
- Q. And I believe the record will reflect that the charge, instant charge, was filed July 5th, 1973 July 9th, 1973.

So that would place it -

MR. SHEEHAN: I object to this one question.

JUDGE SEFF: Objection overruled.

Continue.

- Q. So that would place it approximately about three months after the picketing?

 A. Yes.
- Q. And after the charge.

And I believe the record will indicate that the complaint was issued around the 28th of September 1973.

Do you have any knowledge about that? A. No, I don't.

Q. Now — A. When I say that I don't, what I mean, is that I knew that the complaint was going to be filed but I did not know exactly what date or when it happened for that matter.

MR. GOLOVENSKY: I would solicit a stipulation as to when, if at all, the union was given the option to settle this charge before the issuance of a complaint.

I think it could be somewhat relevant. The complaint is dated September 28th. Would there be any objection to that?

MR. SHEEHAN: I don't understand what you are asking.

MR. GOLOVENSKY: In other words, everyone knew the complaint was coming down.

MR. SHEEHAN: Certainly I didn't know. The Regional Director apparently had a different view.

MR. GOLOVENSKY: In other words, there were no discussions in terms of-

MR. SHEEHAN: Not that I was privy to.

MR. GOLOVENSKY: Your Honor, may I address the bench at this time?

I have further questions of this witness. But we have a line of questioning here by counsel which suggests, would suggest that the only reason we are paying this \$85,000 over three years is because we never asked this man to do work. And I would like to solicit from the union right now. You asked in the beginning whether there is a chance of settlement. Is it the union's position that we can have Korchma doing jockeying on the job?

MR. SHEEHAN: No question.

MR. COLOVENSKY: It is?

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MR. SHEEHAN: No question.

MR. GOLOVENSKY: Is it the union's position if we have two or three hours of jockeying a week that we have to have him for 40 hours a week?

MR. SHEEHAN: I think the contract speaks for itself. You asked me a specific thing. And I will tell you that there was a protest when there was a shipment made to Jersey. There was constant protests using this laborer to use his own truck to do the work of Korchma. And it's the union's position, Judge, that he is there available to be used for such purpose in accordance with the terms of the contract.

MR. GOLOVENSKY: I appreciate that. What the protest was I would like to elicit some more testimony, whether it was for another teamster or the one.

Let me ask this because we have a judge here from Washington. And I think this is the first we hear of it, and it is an 85,000 or part of that impact, and I would like to know whether the union would agree with us that we need maintain under this contract, which is being challenged for its legality under 8(b)(6), that we need maintain a teamster more than the two or three hours assuming that's what it is of jockeying we need.

MR. SHEEHAN: We don't work by the hour. Never have. We work by the day.

BY MR. GOLOVENSKY:

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- Q. Mr. Knesich, I think before the break in the hearing we were talking about Mr. Korchma's approach to you which you placed at the end of September, some three months after the featherbedding charge had been filed and after the picketing, is that correct?

 A. Right.
 - Q. And can you tell us what Mr. Korchma said? Well, let me ask the specific questions.

Did Mr. Korchma mention anything about the dispute between the company and the union? A. No.

- Q. What precisely did he tell you? A. What he said to me was that we had the Purchase job and that we that he will be also covering that job and he suggested that I talk to the company as far as getting a truck to make these moves, whatever moves I had to make.
- Q. I believe you testified that throughout the existence of this White Plains Court House job that you had had other jobs there in Westchester?

 A. Yes, we do. We have a very small job in Valhalla which started only about two and a half months ago, not even.
- Q. And before that? A. Before that when I first started the West-chester County Court House we were finishing up the YMCA.
 - Q. And were there any other jobs in Westchester? A. No.
- Q. Church? A. No, not during this period.
- Q. Now, was this the first time Mr. Korchma ever volunteered, requested a truck to go to the job? A. To me, this was the first time.
- Q. Do you have knowledge that he volunteered to anyone else?A. Not that I know of.
- Q. Did you hear the discussion between counsel indicate the union's position is we can use Korchma for transporting materials between sites and on the site?

 A. Yes, I did hear that.

- Q. And at this time when the company was paying some \$6000 for outside transportation costs, were you aware that you could use your man right there sitting there in his trailer?

 A. No, I was not, for the simple reason that we were turned down previously and it was never pursued any further.
- Q. Now, concerning this telephone, is there a way of locking this trailer? I'm talking about the Korchma trailer now.

 A. Sure.
 - Q. Is it locked at night? A. I hope so.
- Q. Who has the key to that? A. He does.
 - Q. And is there anything to prevent him from locking it at any other time when he leaves? A. No.
 - Q. Let me ask you this:

You have a phone there on the job. Why didn't you both use one phone? Why did you have a separate phone for Korchma? A. Because we were told that -I was told that he was entitled to his own private phone.

- Q. Can you describe this trailer for us, the inside of this trailer.

 A. It's a well, we actually don't even have that trailer. Since recently it has been moved off the job. But originally it was an A & Z type trailer, it's a wooden structure on wheels.
- Q. Did there come a time when you improved that trailer? A. Yes, when we first got that trailer on the job and while Vic Toran was still the shop steward at that time, before he retired, when the trailer arrived at the job he was not satisfied with the interior of the trailer and I remember that we had to get some paneling and put paneling on the walls.
- Q. What do you mean you had to get, it was something that you thought would be nicer? A. No, it was not that we thought. It was requested by him, claimed it had to be done under his bylaws.
 - Q. Now, the question of how much jockeying on the site and how much jockeying between sites is necessary is becoming a more and more

question in these proceedings.

Now, you testified that the total of four weeks over the life of the job, or a hundred and forty hours would be needed for this transportation, is that correct?

A. Yes.

- Q. Could we go over this now in detail, because there may be a factual issue here, as to exactly what kind of transportation you need, J.R. Stevenson needs on that job?

 A. Well, in other words, you want me to describe exactly what happend?
- Q. Yes. A. Sometimes we had to move material in other words, you got figure or picture this job as located on six acres of land and it's actually divided by a street which is in operation for the over the last year. Sometimes, and I will have to say this has been very few times on the job itself that we used the small truck to move material from one location to another.
 - Q. Okay.

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Now, I'm going to ask you in all instances over the life of this job, which is approximately three years?

A. Right.

- Q. To tell us the cumulative total of hours you are talking about when you mention A. No more, I can guarantee it was no more than a week over the period of the job, if I was to put it all together.
 - Q. Putting it all together over a three-year period? A. Right.
- Q. And what other kind of moving is there? A. The only other kind of moving I did with this little panel truck was from the Westchester County Court House to the Valhalla and also to Biomedical Institute up in Middletown, and to Jersey twice.
- Q. And what's the total for this?

 A. Total amount of this, if I was to put it all together, it will never there is no way it will exceed three weeks.
 - Q. So we have two weeks for the first kind and three weeks A. One

week I said for the first.

- Q. One week for the first kind and three weeks for the second kind?A. Right.
 - Q. Is there any other kind? A. No.
- Q. Out of a total of approximately 156 weeks, compressing all the Teamster chauffeuring we need, you would get a grand total of four weeks?

 A. Right.
 - Q. Now, let me ask you this:

How many trucks of any kind enter the job site each week, approximately?

A. This – it's really a rough answer to give because there are some days where you can have a dozen deliveries.

Now, when you are saying the job, I hope that you mean the whole job?

- O. Yes, sir. A. And by that I mean, not directly to J.R. Stevenson.
- Q. No.

What I'm asking is, how many truck drivers a day would Mr. Korchma check the cards? A. As far as J.R. Stevenson is concerned directly, at this stage no more than maybe two or three.

- Q. And I'm asking for the whole job. A. The whole job. I would say it averages out maybe a dozen tops.
 - Q. A dozen a day? A. Yes, more or less.
 - Q. Would it be easier then for you to give me a monthly
- 149 A. Not really.
 - O. So you are taking you are saying approximately a dozen a day.

Does Mr. Korchma check on y deliveries for J.R. Stevenson or does he check every truck coming in the job?

A. Well, from what I have seen, I've seen him check all the deliveries for the job.

Q. Okay.

So Mr. Korchma, if he did nothing else, would be checking approximately 12 trucks coming in a day, five days a week, as an average, four weeks a

month as an average, 12 months a year, for three years, Mr. Korchma, or the person occupying that position?

A. Right.

Q. At the time of the picketing in early July, are you familiar with the fact — yes or no — that the company had laid off Mr. Korchma?

A. Yes, I certainly am.

Q. Do you have any knowledge whether this was involved with the picketing? A. No. The only thing I know is that we had terminated our contract with the union and that the man was going to be laid off on a certain date.

Q. Did you know that the picketing stopped at one point?

150 A. Yes.

Q. And Mr. Korchma was immediately rehired? A. Right.

Q. Now, you were under the impression or have any knowledge that by simply asking Mr. Korchma not to come in that he would not report for work and would not have to be paid?

A. Would you repeat that, please?

Q. In other words, counsel asked you questions about whether you ever told him not to report. A. Yes, I did tell him not to report.

Q. And I'm asking you, did you have the authority to tell Mr. Korchma we don't need you for the next five weeks, don't come in and we won't pay you?

A. Yes, I did. But — in other words, I could have told him not to. But it happened the same way sometimes when we had holidays, where we told him that, for instance, it was a holiday to his trade.

Q. You don't follow my ques...n.

If you told Mr. Korchma not to come in again, we don't need you any more, was it your impression that Mr. Korchma would accept those instructions and say well, it was now nice working with you and I guess I'm off your payroll?

A. No, it wasn't that at all. It was — in other words,

even if I told him not to, I knew that he will be back on the job because this was the impression that I was under, that he will be back on the

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job and we will have problems the following day.

MR. TRUNKES: Your Honor, may I make an observation?

I hate to object to my colleague's questioning, but doesn't the record show that the man was laid off in June and he refused to accept the layoff, and he did picket during the following week and as a result the contract was negotiated and signed. And I think that should answer Mr. Golovensky's questions rather than suppositions of what might have happened. It did happen. I think the record is clear.

JUDGE SEFF: I think it is, too.

MR. TRUNKES: I wonder if he might cut this short.

BY MR. GOLOVENKSY:

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- Q. Now, is it not true that there are certain holidays where employees do not have to report for work and receive holiday pay?

 A. Yes, there are.
- Q. And that if the employer asks the employee to come in he gets double time in addition to his holiday pay?

 A. Yes.
- Q. Did you ever have occasion to tell employees not to come in because we don't need you, all you will just stay home and get your holiday pay?
 A. Yes, 1 did.
- Q. And did that happen on any occasion with Mr. Korchma? A. It happend with well, it happened with Mr. Korchma and also with the fellow before him. And they all regardless of what I told them, they came the next day and they claimed because the job was working they were entitled to a day's pay which would have to be a double time.
- Q. In other words, you told them don't come in, it's a holiday, you are going to get paid anyway, don't come in, we only need one or two trades and they came back and demanded overtime because the job was going?

 A. Yes. The job was going but no deliveries were made on those days because it is actually a holiday for all the other drivers.

Q. I see.

And they still claimed the overtime?

Q. And what happened? A. We had to pay them.

MR. GOLOVENSKY: I have no further questions, your Honor.

JUDGE SEFF: Mr. Sheehan.

153 RECROSS-EXAMINATION

BY MR. SHEEHAN:

Q. Was it your decision to rent a truck sometime ago when you were the project manager? A. Will you repeat that question, please?

Q. Was it your decision to rent a truck when you were project manager?

No. It was the company's decision.

Q. And the purpose of that truck was to make what has been referred to here as jockeying on the job site as well as moves between job sites?

A. It was to make a pickup, a pickup on then another site.

Q. Jockeying between one site and another?

MR. GOLOVENSKY: Your Honor, I think - doesn't jockeying refer to on site?

MR. SHEEHAN: You refer to it being on site an between sites. You use the same term.

MR. TRUNKES: That's not, as I understood when I asked Mr. Jovene to please describe the definition, I think you even stated, your Honor, what you though it to be. And I thought it to be only on the job. In other words, I asked Mr. Jovene, in other words, you don't go on the public highways, and the answer was yes. So I wouldn't use the term jockeying if you

154 are going between sites.

> MR. SHEEHAN: I'm sorry. That's what counsel was referring to. And I didn't want to confuse the witness.

BY MR. SHEEHAN:

Q. And was that truck then rented on what term basis? A. It was

rented on a daily basis.

- Q. But you didn't do the renting of it? A. It was done through our office.
 - Q. You didn't do it? A. No, I did not.
 - Q. In your capacity as project manager? A. No, I did not.
- Q. Now, how many times was a truck rented and request made of Mr. Korchma to operate the truck?

 A. It was never made to answer your first question, it was a request was never made to Mr. Korchma of, to that. And as far as the renting of this truck, it was tried once and it was never pursued any further. I think I answered that question before.
- Q. How many projects managers have there been at the Westchester County complex, County Court complex since the last 18 months?
- A. The last 18 months?
 - O. Yes. A. Two.
- Q. And who are they? A. Nello Biordi, and a fellow by the name of Bennie Bosick, a fellow we have on the job now.
 - Q. To your knowledge, did employees of the company, other than Mr. Korchma, use the telephone in the trailer?

 A. Not that I know of.
 - Q. Did you ever use that telephone? A. I said before maybe a few times during the period, you know, during the duration of the job.
 - Q. Isn't it a fact then of common knowledge that other employees, including supervisors, use that phone?

 A. Not to my knowledge.
 - Q. To your knowledge, was this phone every locked by Korchma?
 A. Not that I know of.
 - Q. When was the last time you were on the job site? A. Yesterday.
 - Q. And have you been there on the basis of about two days a week throughout the period? A. Yes.
 - Q. That you have been superintendent? A. Yes.
 - Q. How many times have you gone into the trailer? A. Maybe ten,

fifteen times.

O. Since 1970? A. Yes.

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MR. SHEEHAN: That the job was started in March of 1970.

MR. TRUNKES: Yes, sir. But the job was started but only certain pilings were done and Mr. Jovene has testified that there were no employees on that job until after these pilings were done and the first contract that he signed himself, there were no employees of the Teamsters on.

And he only hired the first gentleman, Mr. Toran, after the second contract was signed in September of 1971.

And this gentleman, the witness, testified that he came on the job site after Mr. Toran who was already there. And I think we must conclude that he didn't get there until October of 1971.

MR. SHEEHAN: You may want to correct the record, Mr. Trunkes, but I have clear notes as to what was said. This witness testified under your direct examination that he started in October of the year in which the project started.

Mr. Jovene said it was started in March of 1970. The simple deduction means he started in October of 1970.

If there is a conflict in the testimony the record will reveal that. But I'm not making these dates up.

MR. GOLOVENSKY: I am not sure this is relevant, your Honor.

JUDGE SEFF: Let's continue.

BY MR. SHEEHAN

- Q. Do you know who are members of the Builders Institute? A. Say that again?
 - Q. Do you know who are members of the Builders Institute?
- A. No, I don't know who they are but I assume they are contractors.
 - Q. Engaged in operations similar to Stevenson? A. Yes, I assume so.

MR. TRUNKES: Your Honor, if the witness is assuming, I object to his answer and request —

- Q. Don't you know that they are contractors? A. They are contractors.
- Q. That's the purpose of the Builders Institute, to represent contractors, is that correct? A. Right.
 - Q. You know that; didn't you? A. Yes, I knew that.
 - Q. And did the Builders Institute ever inform your company, when you were superintendent, of the terms of any agreements it may have made with Local unions?

 A. I don't know that.
 - Q. Did the Builders Institute call a meeting of employer members in the year 1973 to inform them of the terms of the agreement?

MR. GOLOVENSKY: If the witness knows, your Honor.

- A. I don't know.
 - Q. Did you attend any such meeting? A. No.
 - Q. Do you know if any representative of your company did?
- A. I don't know.
- Q. Have you ever compiled any time sheets of the elapsed time that was spent at the job site in White Plains County Court Center as to deliveries from one place on the job site to another, or from one job site to another?
- A. No, not really.
- Q. So what you are testifying from is not from any data that was compiled on a going day-to-day business operation but merely your estimate three years later?

MR. GOLOVENSKY: Objection, here. Estimates or recollection.

MR. SHEEHAN: That's a fair question.

MR. GOLOVENKSY: Your Honor, I think it's an unfair question.

He is accusing him of making a speculative estimate where it could be recollection.

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MR. SHEEHAN: I submit that's all he is doing since heecompiled no day-to-day data.

THE WITNESS: I don't have a record of exactly what days I made these moves. But the moves then have been made lately in the last year, most of them.

- Q. None in the first year? A. None in the first year.
- Q. Well, now, let us go back to the first year. A. None in the first year as far as I can remember, let's put it that way.
- Q. Well, you had no particular interest in finding how much time was spent in transporting goods and material from one end of the job site to the other, had you? A. Not until the last year and a half.
- Q. From what date did you start making these A. That I can remember, it's been since we started the biomedical center, which I don't recall exactly what day we started the job this past year and a half.
 - Q. Well, was it a year ago? A. It's approximately a year ago, yes.
 - Q. Maybe less? A. Could be a month less, a month more.
- Q. So that's the first time that you made any kind of collection of data to enable you to testify as to how much time was spent in transporting materials, correct?

 A. Moving material from job to job.
 - Q. And did you make a record of those times? A. No.
- - Q. But you didn't use trailers exclusively on the job site, did you?
- A. For these big loads, yes, I did.

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- Q. Did you use other types of equipment but trailers? A. Did I use any other type of equipment for trailers?
- Q. But trailers, my question. A. But trailers, yes, I did. I used a small panel truck, I said that.
- Q. Whose panel truck was that? A. I told you that before, from a laborer employer on the job.
- MR. GOLOVENSKY: This is the second time we are going over this testimony.

MR. SHEEHAN: I don't think so.

MR. GOLOVENSKY: Everyone will recall the discussion about the truck, how old it was, the whole record.

MR. SHEEHAN: I didn't ask any question. Mr. Trunkes asked how old the truck was after you did.

JUDGE SEFF: It's in the record if it was asked.

MR. SHEEHAN: I know that. But this is cross-examination, I am testing his recollection.

- Q. You were here this morning when Mr. Jovene testified? A. Yes, I was.
 - Q. Did you discuss with him what his testimony was going to be?
- A. No, we went out to lunch and had a sandwich and came back.
- Q. You heard him testify this morning? A. Right.
 - Q. And he testified as approximately the same as you have? A. I really didn't you know -
 - Q. What? A. I don't even remember in all honesty.
 - Q. .Don't you recall him testifying to the one week estimate on the job site?

 A. Yes, I remember something like that.
- MR. SHEEHAN: All right, sir.

BY MR. SHEEHAN:

- Q. How much did you pay, by way of expenses for gasoline, for laborers in the first year that you worked at the job site? A. I don't remember what I whatever there was, you gave me a receipt, and whatever it came to as far as gas and tolls, that's what he was reimbursed.
- Q. I'm asking you how much, if you know, in the first year?

 A. I Jon't remember how much it amounted to. I told you. How much in the second year?

A. I don't remember.

- Q. How much in the last 18 months? A. Like I said, these are things that happen, I mean. If a man comes to you and gives you a receipt for \$5 for gas and \$2 for tolls, you give him the \$7 and it is forgotten.
- Q. On how many different occasions did you pay tolls? A. Whenever he had to go to a job, to another job —
- Q. How many toll charges were submitted by him? A. The times, only the times that he went to these jobs.
- Q. I am asking you how many were these times? Thirty? A. No, it wasn't that many.
- Q. How many? A. I would say no more between ten and fifteen, tops.
 - Q. Did you handle all of those toll charges? A. Yes, sir.
 - Q. Or did your predecessor handle some? A. I handled those.
 - Q. Did you handle those after you become general superintendent?
 A. Yes.
 - Q. So the project manager didn't handle it, is that correct? A. No, because the man would be working for me directly from the start, and then when I became a general super, naturally, I knew him and I just handled it myself.
 - Q. But you are not on the job site every day, general superintendent?A. No, right. But whenever I have to make these moves, I so happened

to be there and that's the way they were done, or I set it up.

- Q. Weren't the moves on the job site made at the direction of the project manager?

 A. I imagine some were made at the direction
 - Q. So you have no personal knowledge of those, did you?
- A. Not from job to job. On a job only.
- Q. You didn't have any knowledge on the moving on the job sites?
 - A. Well, that's a fact, isn't it?

BY MR. SHEEHAN:

- Q. On how many occasions were damages paid for some repairs to the truck that was operated by the laborer? A. I believe it was $-\Gamma m$ almost positive it was two.
 - Q. Two? A. Two times, yes.
 - Q. You testified that the trailer was moved off the job? A. Yes.
 - Q. When was that? A. I don't remember exactly the date.
 - Q. No, approximately how long ago, weeks, days and months.
- A. A couple of months.
- Q. Did you ever issue any instructions to Korchma not to check jobs that came on the job site? A. No, I did not.
 - Q. What he did in that respect was completely observed by you?
- A. Right.

MR. SHEEHAN: That's all.

MR. GOLOVENSKY: I have no further questions.

JUDGE SEFF: Hearing no further questions, you are excused.

168 Thank you for your testimony

(Witness excused.)

MR. TRUNKES: Your Honor, at this time, I was wondering if Mr. Sheehan would be willing to enter into a stipulation that at the time that Victor Toran was employed by J.R. Stevenson, the predecessor of Mr. Korchma,

that he was the shop steward there and was acting on behalf and an agen, of the respondent.

MR. SHEEHAN: I would like to be in a position to make that sub I have no personal knowledge of it. The complaint doesn't recite it. The first time I heard the name was today.

MR. TRUNKES: If that is, so, your Honor, then I would like to amend the complaint slightly by changing allegation number 4 to allegation 4-B, which is that Victor Toran, T-o-r-a-n, was, during the time of his employment with J.R. Stevenson Corporation, the shop steward of Local 456, acting on its behalf, and an agent thereof.

JUDGE SEFF: Do you want to be heard, Mr. Sheehan?

MR. SHEEHAN: Well, I would plead surprise, Judge. And if general counsel feels that he has to make that application at this time, and if that should be granted, I would the chance to deny that new allegation 4-B. I have never interviewed the man. I don't know him. He has been on retirement I am told.

JUDGE SEFF: Do you need time to speak to him?

MR. SHEEHAN: Well, I certainly should have that opportunity.

JUDGE SEFF: I think so. Can you speak to him between now and tomorrow?

MR. SHEEHAN: If he is available. The man has retired I am told.

JUDGE SEFF: You might be able to speak to him by phone. That is the only way you could probably.

MR. SHEEHAN: Yes, sir.

JUDGE SEFF: Would you please mark an effort to do that and, subject to permitting the union's counsel time to prepare a defense to this new allegation, which is new as of this moment, I will grant the permission to amend.

But he certainly has an opportunity, should have an opportunity and I will give him an opportunity to prepare a defense.

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NELLO BIORDI

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. TRUNKES:

- Q. State your name and address, please. A. Nello Biordi, 24 Sherman Road, Syosset, Long Island.
- Q. What is your present occupation, Mr. Biodri? A. I'm selfemployed right now. I'm a professional engineer.
 - Q. Have you ever been employed by J.R. Stevenson Corporation?
- 175 A. Yes, I was employed by J.R. Stevenson June 14, 1972 as a project manager, working on the Westchester County Court House up in White Plains.
 - Q. And when did you terminate the employment with J.R. Stevenson?
 A. Well, I terminated the employment with J.R. Stevenson September 14, 1973.
 - Q. By the way, Mr. Biordi -

MR. SHEEHAN: I didn't get the last date.

THE WITNESS: September 14, 1973.

BY MR. TRUNKES:

- Q. Are you appearing here as a witness by virtue of a subpoena submitted to you by this office, my office?

 A. Yes, I am.
- Q. And where were you employed by Stevenson? A. Well, I was employed to be out in the field and see that the construction of the West-chester County Court House job went through according to the plans and specifications set forth by Welton Becket, architect.
- Q. You were the project manager on this White Plains court house complex?
 A. Yes.
 - Q. All right.

And approximately how many workers were on the job site on the average during the time you were up there? A. 110.

- Q. Of that number, approximately how many were employed by Stevenson? A. 45 were employed by them.
 - Q. What occupation did these employees have? A. Stevenson employed Carpenters, laborers, bricklayers, elevator operators and operating engineers.
 - Q. How about teamsters? A. Well, yes, the Teamsters, when I was there on the job, when I was employed June 14th, there was a teamster at the prsent moment till
 - Q. Do you remember his name? A. Arpad Korchma.
 - Q. Was he the only one who was there during the time you were working there?

 A. Yes.
 - Q. What was his position there? A. Well, his position, I was told through my office before I was employed there, there was a shop steward on the job, gave me his name, and his function was to see that the trucks entering and leaving the job site were employed by Teamsters Local 456. And his and also the function was that he would observe any trucks on the premises to see if they had belonged to local 456.
- Q. And while you were working, up until the end of June of this year,

 did you see him check trucks coming into the job site? A. Yes,

 occasionally I'd, you know, be outside in the field and I would see Mr. Korchma check the driver, ask for identification, and proof that he is a member of

 Local 456.
 - Q. And where did he spend his time when he wasn't collecting trucks.
 A. Well, I observed that he was in his office that J.R. Stevenson had supplied for him.
 - Q. Now, I bring you up to Friday, June 29th of this year, Mr. Biordi.

 Do you recall having any conversations or any instructions from your

employer relating to Mr. Korchma's employment at White Plains? A. Yes.

June 25th -

- Q. Well you got instructions? A. I got instructions from my office.
- Q. As a result of the instructions you got from your office, did you have a conversation with Mr. Korchma on June 29th?

 A. Yes, I did.
- Q. About what time of day was that? A. Around 3:00 o'clock in the afternoon.
- Q. Where was this? A. At Mr. Korchma's office, trailer, that we had supplied him.
- Q. Tell us the conversation you had with him? A. Well, I went up to Mr. Korchma and I had told him that I have your final pay check, the reason being that I was told by my office that your contract would end June June 30th and that we no longer need his as an employee.
- Q. Did he say anything to that? A. He said, "I'm sorry. I refuse this pay envelop on grounds that there are trucks, that the job is not finished and there are additional trucks required throughout the duration of the job."

And -

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- Q. Additional trucks doing what? A. Trucks were bringing in materials, equipment.
 - Q. Did he sasy that? A. Yes, he did, sir.
- Q. Did he say anything else? A. Yes, and he said he said that he was going to inform his business agent, his delegate that Monday that he would have a picket line on the premises, on the job.
- Q. Now, you recall going to work the following Tuesday, which would be July 31d, the day before July 4th holiday?

 A. Tuesday. That's

179 July 3rd?

- Q. Yes. A. Yes.
- Q. Do you redall going to work? A. Yes.

- Q. What time did you get there? A. I was on the job at 7:30 in the morning.
- Q. What did you observe when you got there? A. I saw Mr. Korchma in front of the gate on Grove Street. He has no picket sings or anything but I approached him. I said, had the matter been solved. I know you refused the last time layoff and that, has it been resolved because I don't see you having any picket signs. I said are you going through the motions of picketing the job? He said now yes, I am, I am going to pick up picket signs and I will be back shortly.
- Q. As a result, or shortly thereafter did he start picketing at the job site that day?

 A. Yes, he did.
- Q. How long, to your knowledge, did the picketing last? A. The picketing lasted Tuesday, July 3rd. The 4th was the holiday. The 5th, 6th, 7th.
 - Q. 7th was Saturday? A. Yes, right, then the 9th was Monday.
 - Q. That was Monday. A. That was Monday.

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- Q. July 10th, was there any picketing? A. No, sir.
- Q. Did you receive any information or instructions from your employer regarding a contract situation with respondent? A. Yes. That Monday evening we had another job meeting and I was told by Mr. Jovene, my boss, that I was to hire Mr. Korchma that following day, which was Tuesday, July 10th.

And that the - Mr. Jovene, you know, signed the contract and I was supposed to, you know, rehire him.

- Q. And did you hire him the following day? A. Yes.
- Q. Did he appear on the job site? A. Yes.
- Q. And you told him come on the payroll? A. I told him come on the payroll, you know, the office had signed the agreement and that everything that was back to normal again.

Q. What did he do after he came on the job site? A. Well, he would observe the trucks that were coming in.

I had to call, you know, all these different, various trucks that the strike had been settled, come on to the job site because they were neglecting the job completely. They knew there was friction and troubles on the job site and stood away.

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- Q. As a result of the picketing? A. Yes, a result, the dispatcher didn't want to send men out and waste money and time.
- Q. What did Mr. Korchma do after he was rehired? A. His function was again, as any truck appeared, he would ask the driver if he was a teamster, teamster driver and Local 456. And then he would go back to the office. And any time a truck happened to be on the site, we had two gates, he would check the truck out to see if it was a Teamster driver.
- Q. Did he perform any services for Stevenson other than what you just described during the time from July 10th when he came back until you left September 14th?

 A. No, sir.
- Q. Now, did you ever ask Mr. Korchma to do any work such as truck driving?
 A. No, I haven't.
- Q. And could you have used his services in driving, jockeying in the area, making deliveries?

 A. Yes, I could have used him jockeying on the site and off-site.
- Q. Did you discuss this matter with your employer, Mr. A. Yes,

 I did. I asked him if we would purchase a truck, a pickup truck, so
 that we can use Al, you know, for his services.
 - Q. Al meaning Mr. Korchma? A. Mr. Korchma, yes, having Mr. Korchma do the work, instead of using this other laborers truck like Mr. Knesich testified to.

Mr. Jovene told me we went through that route once before and we couldn't get nowhere with the labor unions, that we would have to put on

an additional teamsters.

MR. SHEEHAN: I object to the testimony. It's hearsay as far as the union is concerned, a conversation between two members of management, not communicated to the union.

JUDGE SEFF: I understand the testimony. The present witness is testifying to a conversation he personally had with Jovene. What's hearsay about that? That's primary, not secondary?

MR. SHEEHAN: It doesn't involve any member of the respondent. What two parties, members of the corporation, may have said upon one another is not binding upon the respondent.

JUDGE SEFF: It's not binding, but it is part of the background, background information.

MR. SHEEHAN: It's hearsay to us of the rankest sort.

JUDGE SEFF: I have nothing further to say on that subject.

Go ahead, continue.

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BY MR. TRUNKES:

- Q. Would you continue the answer? A. Yes, I don't know how far I finished but Mr. Jovene had told me we tried that route once before, that if we have a truck on the premises we would have to hire an additional Teamsters, one to operate the truck and one to be acting as the shop steward, which happened to be Mr. Korchma at the time. And if we had the truck, we would have to hire another teamster.
- Q. As a result of that, did you hire anybody else? A. No, I dropped the subject.
- Q. Did you offer Mr. Korchma any other work to do from there on?

 A. No.

MR. TRUNKES: No further question.

MR. GOLOVENSKY: No questions at this time.

CROSS-EXAMINATION

BY MR. SHEEHAN:

- Q. You testified you were here because you were subpoenaed to be
 here. A. Yes, I was.
- Q. Had you presented yourself on behalf of the company in the investigation of the charges that were filed here? A. Yes. I'm in behalf of the company because at the time I was employed by them and I'm doing whatever
 - Q. So you are here voluntarily, aren't you? A. Voluntarily, yes, sir.
 - Q. Did you give a statement -

MR. TRUNKES: Your Honor, I object to that. I subpoenaed the witness. If Mr. Sheehan would like to see the subpoena, I will gladly show it to him. He is not appearing here voluntarily.

MR. SHEEHAN: Voluntarily.

MR. TRUNKES: He is not appearing here voluntarily.

MR. SHEEHAN: He just said he was.

MR. TRUNKES: If he had not appeared, Mr. Sheehan, I would have gone to court to enforce the subpoena.

MR. GOLOVENSKY: Can I be heard?

I would like to say as counsel for the charging party I never met or saw this gentleman before today.

MR. TRUNKES: I might add as general counsel I never spoke with this man, I never saw him before today.

BY MR. SHEEHAN:

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- Q. Did you speak with Mr. Trunkes? A. Well, before the hearing we went over a little briefing.
- Q. Did you sign a written statement? A. No, sir, I didn't.
- Q. Were you interviewed by Mr. Trunkes? A. This morning at 10:00 o'clock.

MR. TRUNKES: Your Honor, I would like to -

MR. SHEEHAN: I just merely wanted to ask for the statement.

MR. TRUNKES: Your Honor, I think the witness may have misunderstood. The question was did he see Mr. Trunkes, yes.

The next question, did he sign a statement, no. However, Mr. Trunkes is willing to acknowledge that Mr. Biordi had been seen by an investigator of this office some months previously and submitted a statement to us.

If Mr. Sheehan would like to see it, I would gladly show it.

MR. SHEEHAN: He said he didn't sign it.

MR. TRUNKES: You asked him about talking to me. He didn't sign a statement for me.

MR. SHEEHAN: I didn't ask him if he signed a statement for you. I asked him if he signed a statement for the Board.

JUDGE SEFF: Let's not get involved in histrionics. If you want to see the statement, let him see the statement.

You want a statement, don't you, if he signed it, you would like to look at it so you can look at it for cross-examination.

Perfectly proper.

MR. SHEEHAN: Established procedure.

JUDGE SEFF: We will have a five-minute recess and Mr. Sheehan can read this document.

(Recess.)

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JUDGE SEFF: You may begin.

BY MR. SHEEHAN:

Q. In the fifteen months you were the project manager at the White Plains complex, did you have any time a conversation with an official of Local 456?

A. No, sir.

Q. In the statement which you signed and gave to the Board's agent, a copy of which was furnished me, you make no mention in that, do you, of a conversation concerning your desire to have a truck engaged by the company

to do some hauling? A. That's correct, sir.

- Q. Now, you had no conversation at the time or any time with the party by the name of Toran, did you?

 A. No, sir, I don't know who he is.
- Q. In the fifteen years that you were project manager, did you ever ask Mr. Korchma to drive a truck?
- MR. TRUNKES: Correct, your Honor.

JUDGE SEFF: Fifteen months.

- Q. Fifteen months, I beg your pardon. A. Would you repeat the question?
- Q. During the time you were project manager, did you ever request Korchma to drive a truck?

 A. No, I haven't, sir.
- Q. During that period, did you furnish him any type of vehicle for transportation purposes?

 A. No, I haven't, sir.
- Q. Were you acquainted with the terms of the contract in effect while you were project manager between Stevenson and 456?

 A. No, I wasn't.
 - Q. You were the man in charge of that project for the company?
- A. Yes, I was.
 - Q. That was your full-time job? A. Yes, it was.
- Q. Any supervision that you may have had only visited the project on occasional days?

 A. Repeat that question?
- Q. Any supervision of yours was not on the job site on a continuing basis but merely spasmodically? A. Yes, it was.
- Q. But you never became or acquainted yourself with the terms of the contract between you and 456, you, I mean Stevenson and 456?
 - A. No, sir. I had no copy.
 - Q. Were you ever furnished a copy of that contract? A. No, sir.
 - Q. Did you know that a contract was in effect? A. Yes, I did.
 - Q. But you never inquired as to its terms? A. That's correct.

- Q. Have you since become acquainted with the terms of that contract?
 A. No, I haven't.
- Q. It was your recommendation sometime in July of this year to engage a truck for the purpose of making deliveries?

 A. Yes, it was.
- Q. And did you reach that decision after analyzing the amount of time that was necessary for such a purpose?

 A. Well, on the adjacent job I noticed there was a shop steward driving a truck and I had observed this and I had, that same day, went back to the office and asked if we could have the same type of convenience.
- Q. And this was another construction company? A. Yes, it was Starrett Brothers in there doing the library, the general contracts adjacent to our building.
 - Q. You were curious as to how a job operated by another contractor could have a steward operating a truck? A. Yes.

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- Q. And from your professional knowledge of the needs of the business you thought it would be good to have a truck there, too, for you?A. Yes, I asked that question.
- Q. Now, did you ever talk to any official of the union, 456, to say what you had observed with respect to the Starrett-Lehigh job and what was your understanding of what was current on your job? A. No, I didn't inquire on that.
 - O. Did you know where the union was? A. No, I didn't, sir.
- Q. You never were furnished with its address or telephone number?

 A. Well, I had the telephone number but I wasn't acquainted where the address was. I'm normally from the City and I did jobs in the City of New York, not up in White Plains.
- Q. But Elmsford is only a matter of about three or four miles from White Plains, isn't it?

 A. I said New York City. I'm not referring to—
 - Q. But you are acquainted with Westchester County certainly in the

environs of White Plains? A. Yes.

MR. GOLOVENSKY: We will stipulate if this will facilitate things if provided with a means of transportation Mr. Biodri could have reached the union office, if that is the purpose of the question.

MR. SHEEHAN: Or he could use a telephone.

Q. Even though you were aware that -

MR. SHEEHAN: Strike that.

Q. Did it come to your attention that Starett-Lehigh was under contract with Local 456?

A. I wasn't aware of that.

Q. Beg pardon? A. I didn't know that, sir.

Q. Did you discuss with Mr. Korchma the fact that the steward at the Starrett-Lehigh building drove a truck? A. Korchma, Mr. Korchma, had —

Q. No. My question is, did you discuss with him the fact that the steward at the Starrett-Lehigh project drove a truck?

A. No, I didn't discuss that.

Q. You didn't discuss it with any other representative of the union?
 A. No, sir.

MR. SHEEHAN: No further questions.

MR. GOLOVENSKY: I have some questions.

Your Honor, it appears to me that this affidavit was taken in conjunct with the 8(b)(4) and 8(b)(7) case. And I'm wondering in that sense whether we shouldn't introduce it into the record because a question was asked whether he mentioned anything in the affidavit, et cetera, going to the 8(b)(6) issue.

JUDGE SEFF: It seems insignificant to me.

MR. GOLOVENSKY: Okay, your Honor.

REDIRECT EXAMINATION

BY MR. GOLOVENSKY:

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Q. You say you didn't know where Local 456 was. You didn't speak to an officer or official of the union.

Isn't it true your sole connection with the Local 456 and with the Teamsters was the fact that you had some man, some Teamster guy, sitting there in the trailer and checking on trucks coming in?

MR. SHEEHAN: I object to the form of the question.

JUDGE SEFF: Objection overruled.

Answer the question.

- A. Yes. That was -
 - Q. That was the sum total of your connection with the Teamsters?
- A. That's correct.
 - Q. If I asked you where the carpenters union hall was, would you know?
- A. Yes.
- 192 Q. And if I asked you who the carpenter delegate was, would you know? A. Yes.
 - Q. And how about the masonry and concrete? A. Yes, sir.
 - Q. These are trades you dealt with? A. That's correct.
 - Q. And you didn't deal with 456? A. No, I had -
 - Q. All you were told there was some king sitting in the trailer and he is to check on the trucks?

 A. That was it.

MR. SHEEHAN: I object to the characterization.

- Q. I'm sorry, some gentleman sitting in the trailer. A. That was the-
- Q. The paneled trailer? A. Right, it was paneled and air conditioned, telephone. Well, this is the conditions they had there. I wasn't going to change anything. And his function was, you know, like I mentioned.
- Q. Did you ever give this gentleman, Mr. Korchma, any instructions?

 Did you give him instructions as to what to do, where to do it?

 A. No, sir.
 - Q. This Mr. Korchma had his own job to do and he did it?

MR. SHEEHAN: I object to the characterization.

JUDGE SEFF: The use of the word "guy"?

MR. SHEEHAN: No. I think he should testify with respect to what he did or didn't do with respect to him, not what Korchma may have done.

Q. As you observed Mr. Korchma had his job to do, checking those trucks, and that was it? A. Yes, that's correct.

Q. You didn't supervise how well he checked the trucks? A. No, I didn't.

Q. If he missed a truck and you didn't go over and say, hey, you forgot that truck?

A. No, if they were non-union drivers, I didn't give a darn. My job was that the job progressed on time.

Q. This Starrett Bros job across the road, where you saw a steward driving a truck — A. Yes.

Q. - do you know how many stewards they had on that job?

A. No, I don't.

Q. I'm sorry.

How many Teamsters? A. I don't know.

Q. Now, you said you recommended that they rent a truck?

A. Yes.

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Q. And have Korchma do some driving? A. That's correct.

Q. Did you recommend that that was to be a daily lease or anything, you know, what kind of a lease for renting? A. Well, that would have been daily proposition. That's the only time we needed him, you know, on a – say maybe twice a week or maybe once a week, depending on the conditions. That was the only time you need jockeying of material back and forth, either the job site or to the yard.

Q. During the time you were there, how many hours of on-site jockeying was Stevenson transportation of materials, transporting of materials, from this site to another Stevenson site or from another Stevenson site to this site, putting it all together? How many hours or days then did that entail?

A. Well, it consisted of about four weeks total on the whole job.

Q. If you put it all together? A. All together, fifteen months that I was there employed by J.R. Stevenson at the court house job, would consist of about four weeks top, which is 20 working days.

Q. Did you have a phone when you were project manager? A. Yes, I had my own phone in my office, yes.

Q. And did you have occasion to use Mr. Korchma's phone?

A. I had used his phone two times in the duration of my employment.

Q. Two times in 15 months.

How is it you happen to remember that? A. Well, I had a personal call and the office was busy. I had to go down like a thousand feet to that particular phone. I knew there was a phone there. And that's one of the reasons, one of the times.

Q. So, in other words, you recall, such an unusual event, that you recall it was twice? A. Twice, yes.

MR. GOLOVENSKY: I have no further questions, your Honor.

JUDGE SEFF: Recross?

MR. SHEEHAN: No further questions.

JUDGE SEFF: No further questions.

Hearing no further questions, you are excused, thank you for your testimony.

(Witness excused.)

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26 Federal Plaza, New York, New York Thursday, November 29, 1973

199 JUDGE SEFF: On the record.

VICTOR TORAN

called as a witness, having been first duly sworn, was examined and testified as follows:

JUDGE SEFF: Please speak in a good firm voice so we all can hear you.

May we have your full name?

THE WITNESS: Victor Toran.

JUDGE SEFF: Would you state your address?

THE WITNESS: 35 Yosemite Avenue, White Plains, New York.

DIRECT EXAMINATION

BY MR. SHEEHAN:

- Q. Mr. Toran, when for the first time did you ever talk to me concerning this case?

 A. Just now.
 - Q. Out in the hallway about two minutes ago? A. Out in the hall.
 - Q. What is your present employment? A. I'm retired.
 - Q. When did you retire, sir? A. 1972.
- Q. Prior to your retirement, were you in the employ of J.R. StevensonCorp.? A. I was.
- Q. And when were you first employed by that company? A. In the latter part of May, around the 26th of May, 1970.
 - Q. 1970.

And at that time were you a member of Local 456, the Teamsters Union? A. I was.

- Q. And for how long prior thereto had you been a member of that union?A. 38 years.
- Q. What was your occupation those 38 years? A. Heavy construction driver, tractor-trailer trucks.
- Q. Now, did you know Mr. Knesich, K-n-e-s-i-c-h, whatever his pronunciation is?

 A. Knesich?
 - Q. Yes.

Do you know anybody by that name? A. No.

- Q. Is it Tony? A. Tony, yes.
- Q. You didn't know him by the last name? A. No.
- Q. When did you first meet Tony? A. When he came on the job at Stevenson.
- Q. Had you been on the jbo before he got there? A. I had.
 - Q. For how many months? A. I don't know. Probably almost a year. I don't know exact time.
 - Q. Sometime before he got there? A. Oh, yes.
 - Q. Who was the project manager when you initially went on the job?
 - A. A fellow by the name of Frank. I don't know his last name.
 - Q. His first name is Frank? A. Frank.
 - MR. SHEEHAN: Would you know, Mr. Trunkes?
 - MR. TRUNKES: Paratore.

THE WITNESS: Paratore, that's it. He came on the job after the strike.

202 BY MR. SHEEHAN:

- Q. Would you answer, please? A. What was the question?
- Q. What were your duties on the J.R. Stevenson job at White Plains?
- A. My duties on the job when I first started, they was doing the excavating and my job was to see that the trucks got in to the equipment, down into the pit, check the trucks out, locking the gates at night, besides opening in the morning, and keeping track of the amount of loads that the trucks made from that specific job to where they were going.

That's when they first started.

Q. Now, when you say keeping track of the loads, would you explain that?

A. Well, we had 24 trucks hauling out at that time, 14 trailers and about ten dump trucks, and my job was to keep track of how many loads each truck made and, in turn, in the evening, I would turn that over to the

superintendent or let him know how many trucks, how many loads are taken out, and how many trucks they had, every morning I had to check every

truck that came in and turn that information over to the superintendent so he know how many trucks he had working that specific day.

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- Q. So you keep a tabulation of the number of trucks that reported, the number of loads that were made each day by each truck and turned those results into the superintendent?
 A. That's right.
- Q. And you do that each and every day you are on the job site?
 A. I did that during the time of the excavating, as long as they had those tractors and trailers and trucks, that's what I did.
- Q. How long a period did the excavation work proceed at that site?
 A. Oh, almost about nine months, I guess, a year.
 - Q. After that, did your duties change in any respect? A. They did.
- Q. And would you tell us what that change was? A. After that, after I got through going and doing all the hauling, my job was to see that the cars in the area had a place to park. I'd see that they could get in and out without a lot of tieup. I had to keep the driveway clear of trucks coming in and out so they could deliver the material, and run errands, which I did.
- Q. When you say run errands, would you specify? A. Well, I went to the hardware stores or any place the superintendent would want something. I would go.
 - Q. How would you go there? A. Sometimes I would walk and sometimes I'd use my own car.

I also took plans to Yonkers and Bronxville for the superintendent with my own car.

- Q. Now, would you explain what you did with respect to the parking of the cars? And whose cars were they, by the way?

 A. Laborers cars, people on the job.
 - Q. Approximately how many cars were brought to the job site each day?

A. Sometimes 65, sometimes 70, sometimes 45. It varied. Some would park out on the streets and some would park inside of the lots. And when the lots got filled, they would have to park somewhere else. It was my job, part of my job, to see that they are kept clear so the cars could get in and out of the parking lot and material could come in off of the highway in the driveway, which we had a very narrow driveway. Couldn't keep it blocked up.

- Q. Who assigned you these duties which you just now have been describing?
 A. The superintendent.
- Q. That was Frank initially? A. Frank Paratore.
 - Q. Did Tony later become superintendent? A. Yes. He was the superintendent at the time but I wasn't there at the time he became, you know, overall everything.
 - Q. Did you ever drive a truck for J.R. Stevenson? A. Yes, sir.
 - Q. Would you tell us the circumstances under which you drove that truck? A. Well, at first we had a I think it's Tony Ravisio, he had a light pickup on the job. And Stevenson wanted to use that pickup to haul around, things on the job site. So I understand they made very provisions with Tony Ravisio to use his truck.

So Tony Ravisio told them if the truck was being used it was all right if Vic used it, he called me Vic instead of Victor.

So I used the pickup truck around on the job, hauling planks, hauling concrete form, forms that they use for the building, or pipe, whatever they had to use.

And then when they stopped using that -

- Q. When was that, by the way, with respect to the initial day of your employment?

 A. Well, that was during the second year.
- Q. Continue. A. And also they got so they didn't want to use the truck any more. So we went to Hertz, the superintendent, Hertz Truck Rental.

- Q. Who went to Hertz? A. I did.
- O. Who sent you there? A. The superintendent.
- Q. Which one, Tony or Frank? A. Frank. Frank had me call up Hertz, make arrangements for a truck because he said I knew more about it than they did, make arrangements, go down and get a truck, pick it up and bring it on the job.

I made the arrangements over the telephone.

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That evening Frank gave me a check to give to Hertz. When I went down the next morning to pick up the truck I gave Hertz a check and I brought the truck back to White Plains court house job. And I used that truck I would say about three or four days for the first time.

Then the truck was taken back. And about a week later, or somewhere, I went and got the truck again, made arrangements to pick up the truck.

I went down and picked up the truck and brought it on the job.

- Q. Where did you pick up the truck? A. Mount Vernon. And we used that truck for about ten days at that particular time. And during that time I hauled forms and lumber and moved straw and pipe, what have you, around on the job site.
- Q. What are the dimensions, approximately, if you know, of the length and the width of that job area up in White Plains?

 A. I don't know. I would say it's kind of hard from Fisher Avenue to —
- Q. About how many city blocks were involved? A. Oh, it was about three city blocks all told.
- Q. Each way, width and breadth? A. Yes. And my job was to, in hauling the material down out of the hole, up on the top of the job where the men would stack it, take it off, and stack it and go back and get another load.
- Q. Would you know now approximately how many times or how many days in which you worked that you drove either that pickup truck or a truck

which was hired from Hertz? A. Well, I would say I drove the pickup on the job four or five days, the pickup.

- Q. Yes. A. And Hertz' truck we had altogether about 12 or 15 days combined.
- Q. When you reported for work each day who gave your instructions as to what to do?

 A. The superintendent Frank Paratore.
 - Q. Did you remain on the job after Frank had terminated his services or he was no longer there?

 A. No. Frank was there when I terminated.
 - Q. Did there come a time when Tony became the project manager while you were there? A. No, not the project manager. He was the concrete superintendent, I think.
 - Q. Concrete? A. I think -

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- Q. That's what you know him as? A. That's what I think his job was.
- Q. Now, did you ever have a conversation with Tony in which you told him that if he rented a truck from Hertz he would have to put on a different chauffeur than you?

 A. Never, never.
- Q. Did any such conversation ever take place? A. No, definitely
 not. Tony and I never had that much conversation.
- Q. Did you ever tell any other representative of J. R. Stevenson, whether it be Mr. Jovene do you know Mr. Jovene? A. I know them when I saw them.
 - Q. You see them on the job site on occasion? A. Yes.
 - Q. Did you ever have any conversation with them? A. Never.
- Q. Did you ever have any conversation with do you know Mr. Biordi,
 Nello Biordi? A. No, I don't.
- Q. He wasn't there when you were on the job? A. Not that I know of.
 - Q. What were the circumstances under which your employment ceased at

J.R. Stevenson? A. Retirement age.

- Q. And when was that, sir? A. That was in 1972.
- Q. And you say is that compulsory retirement, 1972? A. I had reached the age of retirement. 65.

MR. TRUNKES: Excuse me, when did he retire?

MR. SHEEHAN: January of 1972.

THE WITNESS: Yes.

MR. SHEEHAN: January of 1972.

MR. TRUNKES: May I have a short recess, your Honor?

JUDGE SEFF: Short recess.

(Recess.)

JUDGE SEFF: On the record.

You realize, sir, you are still under oath.

210 THE WITNESS: Yes.

CROSS-EXAMINATION

BY MR. TRUNKES:

- Q. You said you first started working in May of 1970 for Stevenson?
- A. The part the latter part of May or early June.
- Q. The spring of 1970, within a month or two? A. Whenever they broke the ground, I started the months after that.
- Q. What did you do before you worked for Stevenson, where were you working?

 A. I was working for Augustus V. Riegel.
- Q. How do you spell that last name? A. R-i-e-g-e-l, Thornwood, New York.
 - O. Where is that? A. In Westchester.
 - Q. Are they still in business? A. No, he isn't.
- Q. After you left that job, you came on to this job here for Stevenson, right, after you left your last previous employment? A. Yes.
 - Q. Did you work for Stevenson continuously every day or every week,

I am assuming you might be sick, until you retired in January of 1972?

- 211 A. That's right.
 - Q. There was no lapse of time between May 1970 and January of 1972?A. No.
 - Q. In other words, there was nothing like three months or six months or nine months that you were unemployed or working for somebody else?
 - A. No. I was there every day.
 - Q. You were there every day on the project and the job was going continuously from the time you were there?

 A. Taht job, they had worked steady antil I retired.
 - Q. The first project manager was Frank Paratore, or the only project manager was Frank Paratore, would that be a correct statement? A. No there was someone there before him who I don't know?
 - Q. Do you remember how long after you started working that Mr. Paratore became project manager?

 A. That I couldn't say definitely but it went it wasn't long. They had two or three people there before him and then he came.
 - Q. Would you say within three months of the time he started?
 - A. I imagine so. I wouldn't I wouldn't swear to it.
- Q. Somewhere in 1970? A. Oh, yes.
 - Q. Now, tell me, was the concrete superintendent there during this time, Mr. Toran? Is that correct? A. Yes.
 - Q. And you knew him, you saw him on the job site? A. Yes.
 - Q. And he was never the project manager while you were working there?A. No, because Frank Paratore was still there.
 - Q. Frank was still there.

Now, I believe you gave us detail of what your job was when you first started when the excavation was going on.

The first thing they were doing on the job site, had to dig a hole and

start from the bottom? A. Right.

Q. And that involved trucks coming in and pulling out debris and sand and dirt?

A. Right.

Q. What was your relationship with these trucks coming and going?

A. To check the trucks when they came in in the morning, the amount of trucks, see that they started on time to hauling the materials, sand, gravel, whatever, fill out, keep track of their loads so in the evening I could turn

in the amount of loads and the amount of trucks that we had on the job, I would turn that into the superintendent.

Q. And by the superintendent, you mean the project manager FrankParatore? A. Frank Paratore.

Q. Do you know what he did with these reports? A. No, I wouldn't know that.

Q. You did this every day? A. Every day they were hauling out.

Q. Do you remember how many months you did this? A. I don't know. It could be - I guess four or five months. It's hard to say.

Q. It wasn't a couple of weeks? A. No.

Q. It was a matter of months? A. Based - yes.

Q. Based on the hauling for May and June, were they hauling first before you got there? A. No.

Q. After you got there they started? A. Yes.

Q. Within how much time, a week or two or a day or two?

A. Maybe a week.

Q. Who actually hired you? A. Who actually hired me?

Q. Yes. Of the Stevenson Corporation, were you interviewed or did you apply for the job? How did you get there? A. No, I went to the – when they started the job, I was sent there.

Q. By whom? A. By the union hall.

Q. Did you presume - A. That's where I went, I went from there

to the office and introduced myself.

- Q. You were registered on an unemployment list, is that it, you had left your last job? You were working at Thornwood?

 A. Yes.
- Q. When did you leave that job? A. When he went out of business which was around, sometime in 1969, the latter part of 1969.
- Q. So you were unemployed from somewhere in the latter part of 1969 until May or so of 1970, is that right? A. No. I went to the haul and I used to work, go on another job, worked for, whoever needed a driver.
- Q. Well, I think the first question or so I asked you, sir, was who didyou work for before you worked for Stevenson.

Now, you told me you worked in Thornwood but now you say you left in the latter part of 1969 and you worked for other people.

So Thornwood was not the last place you worked before Stevenson.

MR. SHEEHAN: Are you arguing with the witness?

- A. It was the last steady job I had.
- Q. Steady job? A. Yes, after that I worked here or there, wherever there is a day's work.
- Q. Do you remember who, among others, you worked for between the time you worked at Thornwood and the time you worked for Stevenson in 1970, before you started working steady for Stevenson?

 A. That's hard for me to say. I don't know exactly.
- Q. Does the union have records of that? Do they keep records of your employment?

 A. Well, the union keeps records of all employment.
 - Q. Your employers must submit to a pension and welfare fund?
- A. Must submit, I mean
 - Q. Do they pay money into a welfare fund for the union?
- 216 A. I guess they do. See, that's office work. I don't know nothing about -

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Q. You don't remember any particular ones you worked for on this unsteady basis?A. Right here offhand I can't say.

Q. In other words, you were registered in the union hall for permanent work and this job came up and someone told you to go down to — up to White Plains for that or down to White Plains? — A. No, I'm not — I don't understand what you mean registered. I'm not registered in the hall for any permanent job like you stated.

Q. I'm not saying anything. I am asking you. How did you get the job? You tell me. A. Like I say, through the hall.

Q. Well, tell me, through the hall, what does that mean? A. I go to the hall, I sit down in the mornings and wait like everybody else and if a person calls in for a driver and I happen to be there or whoever is there first or so, they will send him out on the job.

Q. So it is a dispatcher or someone in the union hall handles that?

A. Someone in the office takes care of the job assignments, yes.

Q. Does he keep records of who he sents out where? A. I guess he does. See, that's office work, I don't.

Q. All right.

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Then when you got to the job site, were you told to report to any individual there to let them know who you were and who you were going to work for?

A. Report to Stevenson's office.

Q. Who did you report to? A. There was a man there before Frank Paratore. I don't know what his name is.

Q. Whoever was in charge of the operation there? A. Yes.

Q. Do you recall what the gentleman looked like? A. About your height and your built, and I think he lived up in the County, I don't know. Because there were three or four there prior to Frank and I couldn't remember.

Q. If you recall, do you recall if he was Caucasian or black? A. He was a white person.

Q. Do you recall his perhaps nationality? A. No.

MR. TRUNKES: For the record, your Honor, I'm about five-ten and 165 pounds.

- Q. And then you reported to him and he told you to go to work, is that right? A. Yes.
 - Q. Did he give you instructions on what your job was to be?

A. Well, he gave me instructions on what to do, you know, like make sure the trucks are there, give him a count of how many, keep track of how many loads and turn it in to him at night because he had to have a record of something.

- Q. Did you do any driving yourself? A. On the job?
- O. Yes. A. Yes.

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- Q. You described that before, did you not? A. I described before. You want it again?
- Q. No, sir, not at this point.

Now, the excavation went along approximately six months or so, sometime it ended in 1970, right?

A. Yes.

- Q. And then they started construction. I'm not familiar with that one. But once you excavate the ground somebody comes in and starts pouring concrete?

 A. Footing work and things like that, drilling, pipe and all like that.
- Q. Now, after the excavation days ended and the I guess they drill holes and pour concrete or set a foundation, what did you do during that period? A. During that period I parked cars, kept the roadway clear for trucks, traffic coming in and out, and supervised aro. If the area, keeping it clean, and that was about it.

And also in the meantime I went to Ford Motor Company and got the specs on a new truck that they had stated they was going to buy and I went and got all that information, turned it over to the superintendent.

Q. That's just a one-day deal, was it not? A. That was a one-day deal, as far as the driving is concerned, I drove the pickup around on the job, moving stuff, material.

Q. I would like a little information on this car parking situation.

As I understood, you stated that there are people on the job working steadily?

A. Yes.

Q. How many employees were working on the job, on the job site at this time? A. Well, maybe a hundred, 65 or better. It varied up and down.

Q. Somewhere between 65 and 100 as a general average? A. Yes.

Q. Now, I will assume being in White Plains most if not all of them came in automobiles, is that right?

A. Yes.

Q. Did any of them come more than by themselves, several people in a car?
 A. Sometimes two or three would be in a car and sometimes one would be in a car.

Q. Fine.

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Could you approximate how many vehicles on an average were coming in daily at that time?

A. Oh, I would say between 35 or 40.

Q. And you parked every one of these vehicles? A. No, I aidn't park them.

Q. What did you do? A. I showed them where to park at the time so as people coming in could get around them. And anybody had to go out, that they could get out. Because if a person come in, and then they left early, they couldn't get out. I would have to call the superintendent or get somebody to go up on the job or somewhere in the hole and get the man's key so he could come and outlock the car to let the people out. That was the purpose of the parking, to see that the people parked inside of the gate so others could get in and out. And also so they didn't block the roadway

coming into the job so as material coming in or people coming in and

and out there would be no hassle.

There was a great hassle at one time for parking there.

- Q. Now, was there a specific area in the job site at that time that was set aside for parking of cars for these people?

 A. There was an area set aside.
- Q. And were all these people told that that's where you parked?

 A. I don't know if they were told that but I was told to see that they get parked in there and not to block up the driveways. That's not the only place they were they parking on the job. In that specific area they wanted them to park in there so it couldn't congest things.
 - Q. What time did the job start in the morning? A. It varied.
- Q. From when to when? A. Sometimes it would start at 6:30, sometimes it started at 7:00. Sometimes at 8:00.
- Q. And all the employees were scheduled to come in at whatever time the job was scheduled, right?

 A. Not all of them. I suppose the concrete fellows were supposed to come in early or carpenters or whatever they had had to. But there was a certain amount that came in early and the rest came in at half past 7:00 to do the work at 8:00 o'clock.
- Q. So perhaps within an hour or an hour and a half, let's say, 6:30 to 8:00, everybody should have been on the job site who was working there?

 A. Yes.
- Q. Now, allowing for some people maybe a little late, right?
- A. Yes.

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- Q. So maybe by 8:15 or 8:30, any one who is going to work would be there or should be there? A. They never come in late like that at 8:30 or else they wouldn't work.
- Q. So actually by 8:00 o'clock or so in the morning, the parking was all done, was that correct? A. Yes.
 - Q. By the employees.

Now, what hours were you working at that time, Mr. Toran?

- A. My regular hours were from 8:00 to 4:30.
- Q. But did you come in at 6:30? A. I did, sometimes 6:30, sometimes at 6:00, sometimes at 7:00, whenever the men were going to start working.
 - Q. And who told you to come in at those hours? A. Superintendent.
- Q. And that would have been? A. Frank Paratore.
 - Q. Frank Paratore.

And you followed his instructions? A. I did. I would come in at 6:30 when he said 6:30. If the men started at 6:30 I would be there at 6:00 and have the gate open. My time would start at 6:30.

- Q. I think you mentioned part of your duty was to open the gate?

 A. Yes.
 - Q. You had a key? A. I did, given to me by Frank Paratore.
 - Q. And you closed the gate at night? A. I did.
- Q. Would it be correct to say that generally speaking you were first man there and the last man off every day?

 A. Yes, I would say I was the last man every day because the rest of the craft got through at 3:30 in the afternoon.
- Q. And you would be there a half hour before the first people were scheduled to work to open up and get the place A. Open the gate and I would be there until 4:30 in the afternoon.
- Q. Now, after 8:00 o'clock, when the cars were now parked, what did you do at this time, and I'm talking about after the excavation. You described what you did with the turcks. A. Whatever I was asked to do for told to do.
 - Q. Well, who was telling you to do these things? A. Frank.
 - Q. And do you recall specifically any specific big jobs that you were performing? And I'm talking about after the excavation, let's say from the

latter part of 1970 and all through 1971 until you retired? Actually what were you doing after the cars were parked?

A. Well, there was always material coming in.

Q. Yes. A. And I would tell them where to go or find Frank to see where he wanted it or where he wanted the truck to go, or what it was to be.

Or ironworks coming in, they wanted it spotted in a certain area, I would have to find out from Frank what he wanted.

He would tell me where to spot them, where to have them put.

- Q. How many trucks on the average during the day would you say would come in to the job site at the time you were working?
 - A. Sometimes four or five. Sometime fifteen, twenty.
 - Q. All right.

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Inside of two minutes you can direct a man where to go, five minutes, maybe, correct? A. I don't know. I never put a time limit on it, where to, you know. After I find out where Frank would want it, or some stuff had to be moved or something like that, I would tell them where to put it, and I did.

- Q. Now, while you were waiting for the trucks, let's talk specially the winter months between 1970 and let's say November till perhaps March of 1971, where did you stay while you were waiting when the trucks weren't coming, what were you doing?

 A. I would either be at the timekeeper's office or I'd be at my office or I'd be up there with Frank in the main office or out in the area walking around.
- Q. Now, you had an office? A. Well, you could call it an office, yes.
- Q. What was it actually? A. It was a little shanty made into an office.
 - Q. Where was that located? A. Right at the entrance of the gate

when you come into the job.

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- Q. How many gates were there by the way?
 A. Well, at that particular time, there was two gates.
 A. No, it was three it was two gates and one entrance.
- Q. One entrance? A. One entrance, you come in off Brookfield Street the back of the job. And then the main entrance was coming in off of Fisher Avenue and then was another entrance of course coming in off of Grove Street at the foot of Quaraopus Street.
- Q. Now, was there one particular entrance there that the trucks came in on? Was there a sign, all trucks enter this gate, or did they go in any gate they wanted?

 A. No, they come in any gate until the latter part of the job, they had a sign up there, truck deliveries.
- Q. Now, how far were the three gates from each other, can you estimate, in either feet or yards?

 A. I would say a city block.
- Q. A city block? A. One was on one block and one on another.
- Q. Is this a more or less square city block that this complex is being built on?

 A. No.
 - Q. Not quite or more? A. It's not a square city block.
- Q. Rectangular? A. Somewhat, the way it the way the buildings are put up, yes.
- Q. And so you had gates on three different sides, right? A. Yes.
 - Q. Grove Street, Fisher Street and A. Fisher Avenue.
 - Q. And Brook A. Brookfield.
 - Q. Brookfield was the back.

Now, where was your office located? A. On the Fisher Avenue side.

Q. And that's the main - is that the one between, in other words.

Grove Street is one end and Brookfield on the other or - A. Yes, the

gate is between them.

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- Q. So this was the middle gate you might say, the main gate?A. That was the main gate.
 - Q. And you were located at the main gate, right? A. Yes.
- Q. Now, during the witner months when it was cold outside, did you generally sit in your office?

 A. I was in my office sometimes, outside.
- Q. Do you have a window from your office to see what's going on outside?

 A. Well, only in the back I can see. In the front we have one cut in. I can tell, yes.
- Q. Were you able to see when the trucks were coming in if you were in your office?

 A. I could see by stooping down and looking out.
 - Q. Now, you were on Fisher.

And trucks came in on Grove or Brookfield.

Were you able to see them? A. No.

- Q. You couldn't? A. No. I would have to go out and walk the job.
- Q. So, therefore, then, if the trucks entered through those two gates and you were in your office on Fisher, it's possible that they went through without your noticing it, is that correct?

 A. Repeat that.
- Q. If you were in your office on Fisher Avenue and trucks were entering the job site on Grove Street, or Brookfield, it's possible they went on to the job site without your knowing it? A. It's possible but it's not probable.
- Q. Why not? A. Because I was more or less outside all the time, walking around or watching, or either in the superintendent's office where I could look out the window or the timekeepr or something like that.
- Q. During an eight-hour day, how much time did you spend in the office?

 A. I'd spend an hour in the morning I know and I'd spend my lunchtime there. And if the weather is good I'm outside. If the

weather's been - well, this is besides, the weather has been bad and I have been told by the superintendent why don't you go inside and get out of the weather.

- Q. Now, you said an hour in the morning you made it very clear that you spent an hour in the morning in the office? A. Approximately an hour, not to be exact.
- Q. Did you do anything specific that hour there? A. That hour that I in between?
- Q. No, in the morning, you said you spent an hour? A. I spent an hour in there.
- Q. What did you do that hour? A. Probably making notations of things I did or things I didn't do things that was done the day before. I always kept a log of things.
- Q. Did you make up your report for Mr. Paratore in your office?

 A. In my office?
 - Q. Yes. A. Yes.
- Q. Was that done at night? A. When you say the report, which report you mean, my actual work?
 - Q. That daily report that you had to give him. A. I turn in my time, yes.
 - Q. Well, you have to make that out? A. Yes, I had to make out the time, that's right.
 - Q. Now, you do that at night or in the morning? A. Sometimes I do it at night. if we work late I do it the next morning, because it had to be turned into the timekeeper. If we work late, the timekeeper is gone, so I have to turn it in.
 - Q. Now, you had a telephone in your office, did you not?A. I did.
 - Q. And what was the purpose of the telephone? A. Well,

anything that happen to come up, any question about the job or question about the deliveries.

- Q. Well, who would you be speaking to?

 A. I would talk to the union hall or I'd talk to Frank Paratore if I didn't see him. That's about all.
 - Q. What did you call the union hall for? A. Beg pardon?
- Q. Why would you call the union hall? A. It's my job to let them know I'm on the job.
- Q. The union has to know you are on the job? A. I want them to know. I don't know if they have to know. I'm supposed to be on the job. I want to let them know I'm on the job and that's it.
 - Q. What purpose? A. What purpose?

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- Q. Why do you have to tell the union that you are working there every day? They sent you there, you are hired, you are working steady, every day, months and months. Why do you have to call the union?

 A. Oh, no one said I had to call them. I called them and let them know I'm on the job and everything's all right.
- Q. I asked you why did you do that? A. I felt as though I should. I didn't do it every day but I felt as though I should.
- Q. How many times a day did you speak to anybody at the union hall?A. How many times a day?
- Q. Yes. A. Maybe one time in the morning I'd call them and that wasn't every day.
- Q. In other words, the most was once a day and maybe not even
 that much? A. Sometimes twice a day. I couldn't say exactly from that length of time.
- Q. Did you make any personal calls? A. No, it was understood with Frank Paratore the phone was in there for business calls only.
 - Q. Well, what business calls did Stevenson have for you to call your

union? A. Called me sometimes. Frank would call me right there on the job.

Q. That's not the question, Mr. Toran.

MR. SHEEHAN: I submit it is responsive.

MR. TRUNKES: It's a response to a question I didn't ask. I don't know what kind of response.

MR. SHEEHAN: It was a question about business and he said he got a call from Frank, the superintendent. I assume that's business.

MR. TRUNKES: Your Honor, the question is, and I will repeat it: BY MR. TRUNKES:

Q. What business did J.R. Stevenson Corporation have with the union that required you to call the union?

JUDGE SEFF: He didn't say he was required to. He said he did it just to keep them informed.

MR. GOLOVENSKY: He also said, your Honor, there were no personal calls and all calls were business calls.

MR. TRUNKES: If they are not personal calls, they are business calls.

If they are business calls, he is working for this company, being paid a salary by this company, I would like to know what business he was referring to the union.

He is being paid a wage and he is calling the union.

MR. SHEEHAN: He said he is on the job.

THE WITNESS: I understand when he said personal call, I meant like if I called you or you or someone personal, that's what I took your question to be, if I'm calling someone personal, some friend of mine, or something. That's a personal call to me, sir.

BY MR. TRUNKES

- Q. But you don't consider calling the union a personal call? A. No.
- Q. It's a business call to you? A. Yes, what else would it be, call

if I wanted to call down there. When I call them and tell them I'm here on the job, everything is all right.

- Q. What I'm asking you if you are working for Stevenson, and you are on their payroll, and they don't tell you to call the union for them for any reason, do you consider it a business call for their benefit for you to call the union?
- MR. SHEEHAN: I think that's argumentative, sir, and I object to the form.

I think the witness has been straightforward in saying that what he did—

JUDGE SEFF: I think the subject matter has been pretty well exhausted.

MR. TRUNKES: I will withdraw the question.

BY MR. TRUNKES:

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- Q. Do you have any idea how many calls a day or a week or a month you made on that telephone?

 A. No, I don't.
 - Q. Did the telephone have a lock on it? A. It did.
- Q. Do you have a key to the lock? A. I had a key to it and the superintednent had a key.
- Q. And did you open it up in the morning and lock it at night?A. Any time I wasn't in, that phone was locked.
- Q. In other words, outside of you and perhaps the superintendent, there would be no way anyone else could go in there and make telephone calls, is that correct?

 A. Not unless they broke in or something like that.
 - Q. Well, they would need a key? A. That's right.
 - Q. And you and Paratore, to your knowledge, were the only ones who had a key? A. That's right.
 - Q. None of the other trades people on the job? A. No, no.
 - Q. Did Mr. Paratore come in and use your phone at any time?
- A. Once or twice he did, when he was down in that area.
 - Q. Once or twice during the 18-month period? A. Once or twice.

- Q. By the way, Mr. Toran, was part of your duties to check the union membership of the truck drivers when they went through the gates? A. I would check a man if he came in, yes.
 - Q. Who told you to do that? A. I know that's my job.
 - Q. Who told you it was your job? A. Who told me to check?
 - Q. Yes. A. No one told me to check. I know it's my job.
- Q. What were you checking?

 A. I would check the trucks, check the guy, see if he is a union driver.
 - Q. And what if he wasn't a union driver? A. I would tell Frank.
- Q. What would you tell Frank? A. I'd tell Frank the man is a non-union man, that's all.
- Q. And what was Frank supposed to do with that information?
 - A. I don't know what Frank was supposed to do.

MR. SHEEHAN: I object.

JUDGE SEFF: Sustained.

Don't answer the question.

BY MR. TRUNKES:

- Q. Who told you to tell him that the man was union or non-union?

 A. I felt as though that's my job, to let the man know what is going on in the job.
 - Q. Now, you say you felt it was your job? A. That's right.
- Q. Did Mr. Paratore direct you to check the membership, union membership of all of the truck drivers and report to him? A. No, he didn't tell me to report to him. He told me come to me lots of times and said is that man okay, and I said yes.
- Q. Okay for what purpose? A. I guess he was wanting to know if he was a union man.
- Q. Did he tell you that? A. He asked me that. He didn't tell that, he asked me that.

- Q. Asked you what? A. Is the man all right, a union driver?
 - Q. He asked you is the man a union driver? A. That's right, is the man union, that's what he asked me.
 - Q. On each truck that went through? A. Not each truck. Like Colonial come in, they are union. He might ask one fellow.
 - Q. A truck that's unfamiliar, a new truck, and Frank Paratore would ask you if the man was a union driver?

 A. He has asked me, yes.
 - Q. And you checked all these trucks, like you say, Colonial you didn't bother checking?

 A. I check Colonial, one man, not all of them.
 - Q. The ones you knew, I assume during the time you knew certain drivers, you knew they were union, is that correct?

 A. Yes.
 - Q. And the ones you weren't familiar with, new drivers, you would check to see if they were union drivers?

 A. I wouldn't say that because I don't know whether they are new drivers or not because a lot of those drivers I don't see them. A man has a hundred fifty trucks rolling. So I don't know if a man is union or not.
- Q. So you checked every one? A. No, I didn't.
 - Q. You checked every one you weren't positve was union people, is that fair?

 A. That would be all right.
 - Q. Did you ever report to the union that there were non-union truck drivers coming through? A. I've told the union there's non-union drivers coming in on the job.
 - Q. Is that part of your duties? A. I feel as though it is.
 - Q. But you weren't told it was? A. No. I wasn't told.
 - Q. By the way, you were the shop steward, weren't you?

A. That's right.

MR. TRUNKES: Mr. Sheehan, can we amend your answer to 5-B, that this man is a shop steward and agent of the respondent, as I asked yesterday?

MR. SHEEHAN: I have no objection to that stipulation.

MR. TRUNKES: So in fact the answer would be affirmative?

MR. SHEEHAN: Yes.

BY MR. TRUNKES:

Q. Now, as shop steward, what were your duties? A. My duties was to see that — on this particular job, see that the trucks got in, got out with the least loss of time, make sure that they get the material right. If I had my doubts about a driver, as you say, I might say, you got a book. Lots of times I never even checked them, just asked them, they said yes, okay.

And I'd find out where the boss wanted the stuff or what he wanted *done, or sometimes he would say I got so much and so much stuff coming in, make sure that area is clear down there, I'd make sure the areas were clear.

- Q. That's not part of your shop steward duties? A. I was doing what the boss told me to do.
- Q. Maybe you misunderstood. I asked you you were the shop steward?

 A. Right.
- Q. And you were the only Teamster working there at the time?

 A. That's right.
- Q. So, therefore, you didn't have to worry about problems that other employees had, that you would settle in a place where you had ten workers with a shop steward and they had problems? You didn't have that problem, did you?

 A. Yes, I have a problem on the job to do. I had to do what the boss told me to do.
- Q. No, the question is, in certain jobs when you have a shop steward, you have maybe five, ten other employees? A. Yes.
 - Q. And that shop steward would hear their gripes, grievances, complaints and you would try to settle that with the boss, that's what a shop steward is supposed to do, right.

 A. Yes.
 - Q. You represent the union, right? A. Yes.

- Q. Or a man comes in and says you are violating the contract and you would talk to the foreman and says this is what the contract says and you are not living up to the contract, this is what the shop steward normally does, is that correct?

 A. Yes.
- Q. Now, you didn't have other Teamsters working there except you?

 A. On the job site?
 - Q. On the job site. A. No.
- Q. So you didn't have to worry about correcting grievances of other employees?

 A. Not of other men, no.
- Q. Did you have grievances of yourself that you complained about to Mr. Paratore or anybody? Did you have any gripes, complaints about anything? A. Of myself?
 - Q. Yes, concerning yourself. A. No.
 - Q. No.

Is the answer no? A. No. When you say grievance for myself -

- Q. Well, you may have a grievance. Suppose they give you a place to sit and don't give you heat, wouldn't that be a possible grievance, it's cold, how about giving me some heat?

 A. Well, I got that.
- Q. But you didn't have any problems yourself? A. No, not outside of what Frank gave me, no, I didn't have no problems.
- Q. Outside of there what Frank gave you? A. He gave me a shanty and heat and things like that.
- Q. In other words, the company treated you fairly while you were working there?

 A. They treated me all right.

BY MR. TRUNKES:

Q. During the time you worked there, did you yourself file any grievances with the company relating to your working conditions?

A. Well, if you call it a grievance, I called — I asked Frank about a place to, you

know, to go into, when we had - like when he gave me that shanty.

- Q. To make an office out of it? A. Yes. He said he would as soon as he got around to it and got a place, he gave me that.
- Q. Is that the only one you can think about? A. You say grievance. Speaking about me, I mean —
- Q. Then you had no grievance once you had this shanty? A. No, we got along all right.
 - Q. All right. I just asked you. I'm not trying to trick you.
- I believe you stated that you don't recall or you never had a conversation with Tony in which he asked you perform some work and you refused to do so? A. Never.

MR. TRUNKES: I have no further questions at this time.

MR. GOLOVENSKY: I have some, your Honor.

CROSS-EXAMINATION

BY MR. GOLOVENSKY

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- Q. Mr. Toran, you were shop steward on this job? A. That's right.
- Q. Had you been shop steward for Teamsters at any other job previously?

 A. No.
 - Q. This was your first job as shop steward? A. Right.
- Q. And did anyone from the union tell you what you were supposed to do as shop steward? A. No. They didn't tell me what I was supposed to do.
 - Q. Did you know what you were supposed to do as shop steward?
- A. I did by being on the job, another job, with another shop steward, I did.
 - Q. I am sorry. You were shop steward? A. No, I wasn't.
 - Q. You observed the shop steward on another job? A. That's right.
 - Q. And you worked for how many years in construction? A. 38.
- Q. And you knew pretty much what a shop steward was supposed to do, is that correct, in the 38 years? A. Well, yes, from observing on my

- job. Remember, I was only on my one job. I wasn't on other jobs.
- Q. I understand. But you were on a number of jobs during 38 years, right? A. Yes.
- Q. And you observed what a shop steward is supposed to do?
 A. Yes.
- Q. After all, you accepted the responsibility and you felt you knew what you were supposed to do?

 A. That's right.
- Q. Now, did your job as shop steward entail knowing then what the contract said, collective bargaining agreement between your local and this company?

 A. I know what some of what my contract would say, yes.
- Q. Wasn't that part of your job as shop steward to be familiar with the contract? A. Well, yes. I think everybody should be familiar with what they got to do, contract or no contract.
 - Q. Right. I'm not asking you anything terrible. I'm just trying -
 - A. The way you are putting it, the way what I was talking about.
 - Q. You put it your way. A. I answered the question your way.
 - Q. As shop steward you were familiar with the contract? A. I was.
 - Q. You were? A. Yes.
 - Q. Did parts of your shop steward duties entail checking drivers to see if they were Teamster drivers?

 A. Yes.
 - Q. Were part of your duties as shop steward to inform the union if a driver was not a teamster driver?

 A. No, I would inform the boss.
 - Q. And you would never inform the union? A. I informed the boss first.
 - Q. And then? A. Then the boss say, well, get in contact with the union.
- Q. And then you would contact the union? A. Yes.
 - Q. And how would you do that? A. I would call.

O. You would call them.

So you would call the union other than to tell them you were on the job? There were other reasons why you called the union?

A. I stated I would call them for that.

- Q. Well, would you also call them to tell them you are on the job?

 A. Yes.
- Q. And you would also call them to tell them on occasion that a driver was not a Teamster member?

 A. After informing them after informing the boss, I would do that.
 - Q. That's correct.

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Now, how many calls would you estimate you made a day from your phone in the trailer? A. Maybe one.

- Q. One a day? A. Two. They would average one or two. Sometimes none.
 - Q. One or two a day on an average and some days none.

Would it surprise you to know that the telephone bill was about 90 to 100 dollars a month?

A. Not while I was there for my phone.

- Q. Are you sure? A. Positive.
- Q. Did you receive calls on that telephone? A. No, no.
- Q. Didn't you tell us or testify that Frank would call you on the telephone?

 A. Well, yes, that's right on the job.
 - Q. Well, did it come over the telephone? A. Yes.
- Q. And did you receive other calls on the telephone? A. I would receive calls from the union sometimes.
- Q. What would they be calling you about? A. How is everything, how are you doing, how are you making out. Okay.
- Q. And what is how is everything, what did that mean? A. I don't know. I guess the figured how is everything, how am I doing, okay.
 - Q. What does that mean, your health? A. It could have meant my

health. I don't know. They say how is everything doing. Okay.

Q. Mr. Toran, you are testifying under oath now. A. I am. I know.

- Q. The union called you to ask how is everything and you didn't know what they meant?

 A. You asked me what did they mean by "everything."

 I said they called me, asked how is doing on the job, everything all right.

 And I imagine any trouble or anything, no.
 - Q. Who called? A. Sometimes the man at the desk, Williams, the delegate.
 - Q. Williams? A. Williams.
 - Q. From Local 456? A. That's correct.
 - Q. Other times someone else? A. No.
 - Q. Always Williams? A. I wouldn't say whenever I got a call, it would be from Harry.
 - Q. Harry Williams? A. Harry Williams.
 - Q. And he would say how is everything on the job, any problems?A. How are you doing.
 - Q. And what would you answer? A. Everything is all right.
- Q. What did you mean by that? A. Well, there are no problems or nothing. Everything is all right.
 - Q. What kind of problems could there be? A. I don't know what problems would come up.
 - Q. I see.

So was he calling you at your trailer? A. Yes, he has called at the trailer, yes.

- Q. How many trucks a day came into that job on the average?

 A. That I couldn't answer, because some days it would be 25 or 30, 15, some days it would be one or two. I couldn't break it down to the average.
 - Q. I think you testified that you would guess about twelve to fifteen,

isn't that correct, you would estimate? A. Sometimes twelve or fifteen, sometimes three.

- Q. On an average? A. When you say on an average -
- Q. Isn't that what you testified on direct excuse me, to Mr. Trunkes' question.
 A. I was asked how many trucks came in on the job.
 - Q. An average and you answered twelve to fifteen, isn't that correct?
- A. That wasn't daily. That might be two or three months, one month, I
 don't know.

JUDGE SEFF:

Did you make two hundred dollars a week, 250?

THE WITNESS: I would say somewhere like that.

JUDGE SEFF: Then three hundred some weeks with overtime?

THE WITNESS: Some weeks with overtime, yes, sir.

JUDGE SEFF: What is the lowest you ever made, \$100?

THE WITNESS: No, lowest I made I would say was around two something, two and a quarter, something like that, I imagine.

BY MR. GOLOVENSKY:

Q. Didn't the contract provide for a minimum of \$300 to the shop steward?

MR. SHEEHAN: It's not what the contract provides, it's what you asked him he earned.

MR. GOLOVENSKY: Your Honor I am being harassed here. The gentleman said here he was a shop steward and familiar with the contract. And he said he had no grievances or complaints. Now, he is testifying here in the sum of money which is less than the contract minimum and I'm allowed to pursue it.

A. Whatever the minimum wage I was supposed to collect, that's what I got.

Q. And never lower, right - A. Beg pardon?

- Q. And now not lower as far as you know? A. I never got under what I was supposed to get.
- Q. And did you earn overtime for yourself above the minimum?
 A. Yes, I made overtime.
- Q. Do you know as shop steward approximately what percentage of wages is paid into fringes, pension, welfare?

 A. That I don't know.
- MR. SHEEHAN: The contract is in evidence, Judge, and it speaks for itself. It is the best evidence. A. I don't know.

MR. GOLOVENSKY: Your Honor, can I ask at this time that I be allowed to pursue cross-examination without having objections each time. I am asking the gentleman. He is a shop steward. There were questions from our witnesses —

JUDGE SEFF: You asked him if he got any fringe benefits and if so, how much did they come to and he said he didn't know.

BY MR. GOLOVENSKY:

- A. As shop steward, were you familiar with the fringe benefit provisions of the contract?

 A. No.
 - Q. Does 40 per cent ring a bell?

MR. SHEEHAN: I submit there is no such -

A. I don't know.

MR. SHEEHAN: There is no such figure in any of the contracts in evidence.

MR. GOLOVENSKY: Your Honor, I am allowed to job this witness' recollection.

JUDGE SEFF: Continue.

BY MR. GOLOVENSKY:

Q. 40 per cent overlay, something like that doesn't ring a bell?
A. To me it doesn't because I knew I was getting hospitalization, pension, like that. I don't know what the fringe benefits was.

- Q. Now, on this Thornwood job, did you park cars? A. No, I didn't.
- Q. Was this the first time you were you directed traffic, parking cars? I mean as a steady function? A. No, it was no steady function, no. I didn't park cars before.
 - Q. Was this the first time you did it? A. Yes.
- Q. Does this hall that you were directed from, the union hiring hall, does that work on the basis of seniority, do you know? A. No.
- Q. Does determining who will be a shop steward work on the basis of seniority?

 A. No.
- Q. Now, you testified on direct that throughout your 18 months on the job you drove trucks, in a number of instances a Hertz truck, and in another a borrowed truck for a combination of 12 to 15 days, is that correct?
- A. Yes, somewhere, I would say so, yes.
 - Q. And you also testified that you went to Ford concerning specifications of a truck? A. Yes.
 - Q. Who parked the cars on the days you were absent? A. Days I was absent? I wasn't absent.
 - Q. Well, when you went to Ford. A. That was just down the hill, maybe fifteen or twenty minutes.
 - Q. So this Ford project was 25 minutes that you mentioned? A. Yes,
 - Q. Now, when you were driving the Hertz truck around the site, who was parking cars and steering trucks, directing trucks? A. The cars were already parked from in the morning.
 - Q. And the trucks coming in? A. Sometimes trucks would come in, yes.
 - Q. And who was directing them? A. They had to come right by me where I was.
 - Q. And you would get out of your car and direct them? A. Not out

of my car. I am standing beside the truck being loaded.

- Q. Didn't you take that car somewhere else? A. Right up the site, up the hill.
- Q. Would all the trucks go by that site? A. Not all the trucks.

 When you say all the trucks, you mean there is a group of them. Sometimes one, sometimes none. Sometimes five or four.
 - Q. But if you were up on the hill, as you say, unloading, and a truck, one truck came in, who directed that truck?

 A. What type of truck?

 If it was a concrete truck —
 - Q. I am asking you. A. If it was a concrete truck he would go to Tony.
 - Q. And if it was a different kind of truck? A. He would see the labor foreman. And he would direct him where to put it in the warehouse or where he is going to put it.

MR. GOLOVENSKY: Can we go off the record a second?

JUDGE SEFF: Yes.

(Discussion off the record.)

JUDGE SEFF: On the record.

BY MR. GOLOVENSKY:

- Q. Mr. Toran, I want to show you Respondent's Exhibit 1 introduced in evidence by the union and ask you to look at it and see if this was the collective bargaining agreement during your time or at least part of your time there?

 A. It appears to be.
- Q. Well, could you take your time and ask it ask you to examine it so we can have a more definite answer.

MR. SHEEHAN: I will stipulate to it.

- A. It appears to be the same. When you say read it, read the whole thing?
- Q. Take as much time as you need to testify that that's the document over which you presided. A. It appears to be the same.

JUDGE SEFF: It appears to be the document he is familiar with.

Q. Could I ask you to look at Article 19 in particular. It's at the end, I think the second to the last sheet.

Yes, you got it.

And I ask you to look at item No. 2, "The employer shall supply a heated trailer with telephone."

A. Yes.

- Q. Did you ever submit a grievance that it was not being complied with? I mean you said initially there was some lead time. Once you got it, did they turn the heat off, take it away?

 A. They didn't take it away from me, no.
- Q. The telephone was there? A. Well, the telephone was put in after I had the trailer about a month or two.
- Q. And you never had occasion to introduce a grievance about that clause, did you, as shop steward? A. Only to Frank Paratore himself, when are you going to get me a shanty or something so I can get out of the weather.
 - Q. You didn't have any further occasion to talk to him after you got it?A. Not with him about it.
 - Q. Would you read item three, Article 19, did you ever submit a grievance with respect to that?

 A. What do you want to know about it?
 - Q. Did you ever submit a grievance on that? A. No, I didn't submit no grievance.

MR. GOLOVENSKY: Can we have a two-minute recess, your Honor, please?

JUDGE SEFF. Two minutes recess.

(Recess.)

JUDGE SEFF: On the record.

BY MR. GOLOVENSKY:

Q. Mr. Toran, did you speak to anyone about your testimony today?

- A. About my testimony?
- Q. Yes, about what happened during this period of time? A. No. I just spoke to the lawyer this morning.
- Q. I didn't say the lawyer.

Anybody? A. No.

- Q. How did you know to come here? A. I was asked to come here.
 - Q. By whom? A. By John Leggio.
 - Q. Did you speak to him at all about why you were coming?
- A. Prior to here?
 - Q. Yes. A. I never spoke to him about anything until this morning.
 - Q. To whom? A. John Leggio.
- Q. He called you this morning to come in? A. He called me last night to come down.
- Q. Did he speak to you what to come down about? A. No, because I didn't know until I got down to the hall.
 - Q. By the way, are you on a union pension? A. I am.
- Q. Now, I believe you testified that you never had occasion to enter into a grievance when Mr. Trunkes asked the question?

 A. Yes.
- Q. This is Mr. Trunkes? A. Yes.
 - Q. When he asked the question. A. See, what you call a grievance, I mean I might just speak to the man about something, if that's a grievance, then you could call it that. I would say Frank, when are you going to get so and so. Okay, we will get it as soon as we get a hold of it. If you call it a grievance —
 - Q. That's what you did with the trailer in the beginning, and he gave it to you? A. Over a period of time, he gave it to me, yes.
 - Q. Did you ever hear of a company by the name of Bombace?
 - A. Bombace?

- O. Yes. A. Yes.
- Q. What is that company, concerning this project? A. Well, Bombace and L&G, they were a joint affair in the construction part.
- Q. What were they doing on the job? A. They were construction, digging.

MR. SHEEHAN: I object to this, Judge, immaterial.

A. The other one dug the hole.

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MR. SHEEHAN: There is nothing in the complaint concerning any other employer by that name and I think it's improper.

MR. GOLOVENSKY: Subject to connection, your Honor.

JUDGE SEFF: Will you connect it up?

MR. GOLOVENSKY: Sure.

JUDGE SEFF: Go ahead.

BY MR. GOLOVENSKY:

- Q. What was Bombace doing on the job? A. They were construction. They were the construction, general contractors for construction, digging the hole and dirt and everything else.
- Q. Were most of the trucks coming in coming in for Bombace during the excavation period? A. Coming in for Bombace? Oh, I imagine so because he was the construction, he was the contractor.
- Q. And out of the 12 to 15 trucks, how many came in for Bombace, could you estimate, do you recall?

 A. I guess a lot of them, including his own.
 - Q. How many came in for Stevenson? A. Came in for Stevenson?
- Q. Yes. A. They come in for Stevenson. Bombace was the general contractor and he was for Stevenson, so I guess the trucks are for them all.
- Q. Well, Mr. Toran, you've been in construction? A. Yes.
 - Q. And I think you know what I'm asking. Stevenson had a contract

with the owner, J.R. Stevenson had a contract with the owner, the State?

- A. No, not the state. With Bombace I might presume. Not the state.
 - Q. Were these truck drivers delivering materials to J.R. Stevenson?
- A. They were hauling material out.
- Q. And hauling materials out, were they doing it under the direct supervision of Stevenson or under the direct superivison of Bombace, the sub? JUDGE SEFF: If you know.
- A. I don't I couldn't see, Stevenson had his superintendent for men out there as well as Bombace, so, it's kind of hard to answer the question the way you put it, were they hauling for Stevenson or Bombace.
- Q. Well, I think it's important. You know what a sub is? You worked 38 years? A. That's right.
- Q. And Bombace was the sub? A. Yes. He would be a subcontractor for Stevenson.
 - Q. Right.

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And Stevenson delegates or gives him certain responsibilities for a price which he has to perform, Bombace? A. Oh, I wouldn't know about the price.

- Q. I didn't ask you what the price is. But that's what a sub is, right?

 A. Yes. You let it out for a subcontractor to do the work.
- Q. And were these trucks coming into the subcontractor or were they coming in directly for Stevenson, the taking out? That's not a difficult question.

 A. It's rather difficult because Bombace was the general contractor for construction and it was up to him to get the dirt and things out.

When all these trucks come in, I don't ask them are you coming in for Bombace, are you coming in for Stevenson. They are coming in on to the job site to do the job.

Q. And you estimated that all the trucks were connected with Bombace, isn't that what you testified? A. No, I didn't testify to that.

Q. Well, the record will show what you testified.

Now, your testimony is that you were an employee of Stevenson?

A. Yes.

- Q. And what was your job for Stevenson concerning these trucks that were coming in and going out of the site? A. Checking them in, the amount of trucks, the amount of loads during the day that they would make.
- Q. And you were submitting this to Stevenson or Bombace? A. I was submitting this to Frank Paratore.
- Q. In writing? A. Yes, note, how many trucks and the loads they make.
 - Q. Okay.

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Did you ever complain that laborers were doing any hauling on the site?

A. Did I ever complain — no, I didn't. I made a statement. I wouldn't say it was a complaint.

- Q. To whom? A. To Frank.
- Q. When? A. When he was on the job.
- Q. When, approximately when, can you estimate it in time? A. Oh, I can't place exact time.
- Q. Was it when he first came on the job? A. The holes were dug, everything was dug. This is during the procedure of building forms and things like that.
- Q. And did you ever notify the union that you had complained toFrank? A. No, I spoke to Frank himself.
- Q. What did Frank say to you? A. Frank said they were going to buy the truck and they wanted to use it to see if it would perform the duties. And after they used it four or five times, they then didn't use it any more.
 - Q. So this was about four or five times? A. Approximately that.

- Q. Was this the same truck you drove, you testified you drove?

 A. That's the pickup that I drove.
- Q. Yes. A. Because the laborer that owned the truck told Frank Paratore, I don't know whether he told Tony or not, but he told Frank Paratore that it is all right to use the truck if Vic drives it. He called me Vic. Didn't call me Victor.
- Q. But was this the truck they were thinking of buying, this truck?A. That's right.
 - O. The same one you drove? A. That's right.
- Q. And then you went to Ford about another truck? A. After they go through using that.
- Q. And A. You mean Ford. I went to Ford. Frank sent me to Ford during that time that they were using the truck, to get an estimate, get the specs on a truck.
 - Q. So they were both thinking of buying the old truck and buying the new truck? A. That I don't know. I know they were thinking about buying the truck, the pickup, that he told me.
 - Q. And they also rented a truck from Hertz? A. This was a this was not a Hertz truck.
 - O. No.

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On a different occasion? A. On a different occasion, yes.

- Q. Now, that was your only complaint to the company about the laborers doing any driving was about this older pickup truck about five or six times and he answered you, Frank did, that we just want to see if we should buy it, and, therefore, you never reported it to the union?

 A. It wasn't necessary.
 - Q. And that was your complaint.

Now, did you testify that you went on some errands? A. At various times, yes. Frank asked me to go the hardware store or he asked me to take

plans down to Broxville for some architect or something.

- Q. How long would that take? A. I don't know. Would take me would take my own car. Didn't give me no transportation. I don't know how long it took. Maybe a half hour, an hour.
 - Q. Round trip? A. If I went around dinnertime, I would have my dinner before.
 - Q. And how often was this? A. It wasn't often, now and then. Maybe three of four times, at different times.
 - Q. You didn't ask for expenses, right? A. No.
 - Q. So it didn't happen too often, right? A. Whether it happened or not, they didn't do anything for me.
 - Q. Did you ask for any? A. He asked me, would I do him a favor, I said sure I would.
 - Q. Now, you testified that on this Thornwood job you worked until late 1969, is that correct? A. Sometime in 1969, yes.
- Q. And you came in the spring, you came to Stevenson in the spring of 1970? A. Yes.
- Q. Now, you testified you had during that period temporary jobs, correct?

 A. That's right.
- Q. You would go to the union hall? A. Yes.
 - Q. And you would be assigned temporary jobs? A. If there was one open.
 - Q. What were these temporary jobs? I don't mean the name of the employer, but what kind of jobs. A. Just to drive, drive a truck.
 - Q. And how long would they last? A. Maybe two days, maybe a day, maybe three days.
 - Q. And what would determine how long the job was? You weren't unsatisfactory or anything, right?

 A. No. As long as it was a day's work.
 - Q. If they had a day's work they would call you? A. I would be there.

- Q. You would be there. They would call the union. You would be at the union hall. The employer would call the union hall and say I need a man for a day or two days or whatever, and you would go to that employer, work for that time, and then go back to the union hall? A. That's right.
- Q. Were you aware or do you recall the fact then Stevenson had outside trucking firms come in and do hauling outside of the site, you know, from the site to somewhere else or from somewhere else to the site?
- A. Well, seeing trucks come in there from Long Island, had Stevenson's name on it. Maybe somebody else's, I don't know.
 - Q. I'm asking you to recall, if you can, whether you were aware that Stevenson, when he had a big, when I say a big job, I mean like a trailer, maybe two trailers, but could be one trailer size hauling from the job site to another Stevenson job site for them or from another Stevenson job site to the courthouse job site, were you aware or do you recall these trucks coming in upon occasion?

 A. I recall a truck coming in from Long Island with some lumber, or where he came from I don't know. And I recall the truck from Long Island when he took a load or something out, I remember that.
 - Q. And do you know whether the drive was a Teamster member? Did you check his card or ask him? A. Did I check him? Yes, I asked him, you a union member. He said yes.
 - Q. On both occasions, the one you remember with the lumber?

 A. Well, I think it was the same one that came one time to take a load like that out that had Stevenson's name on it, or some other construction.
 - Q. Do you know how long the excavation phase of the project lasted?
- 269 A. No.
 - Q. Do you remember when it started? A. I know they broke ground around April I think of 1970
 - Q. April or May of 1970? A. Somewhere up through there. They

had a ceremony. I remember that.

- Q. And how long did it last? A. I don't know. You know, ground breaking ceremony, maybe about an hour.
 - Q. Not the ceremony.

How long did the excavation last? A. Oh, offhand I couldn't say exactly how long.

- Q. I believe you testified in response to Mr. Trunkes' questions about six months.
 A. Maybe six months, somewhere in there.
- Q. Now, can you pin down for us when the Hertz trucks were rented?

 A. No, I cannot.
 - Q. Well, was it after the excavation started? A. Oh, yes, yes.
- Q. How long after it started? A. Oh, this is when they were doing the building, when they were putting the concrete building up, like that.
- Q. When did they start putting the concrete building up? A. I don't know.

MR. GOLOVENSKY: Your Honor, I have no further questions at this time. Thank you.

MR. SHEEHAN: No redirect, sir.

JUDGE SEFF: Hearing no further questions, you are excused. Thank you for your testimony.

(Witness excused.)

JOHN LEGGIO

called as a witness, having been first duly sworn, was examined and testified as follows:

JUDGE SEFF: State your full name and address.

THE WITNESS: John Leggio, 50 Cottage Place, Tarrytown, New York.

JUDGE SEFF: You may proceed.

MR. SHEEHAN: Thank you.

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DIRECT EXAMINATION

BY MR. SHEEHAN:

- Q. What is your occupation? A. I'm the president and business agent of Local 456.
- Q. How long have you been a business agent? A. I've been a business agent almost two years now.
- Q. How long have you been president? A. Been president since 1960, about 13 years.
- Q. During the period of your office as president, did you also work for an employer?

 A. Yes, sir.
- Q. I take it that since you've been a business agent you have worked full time for the union?

 A. Yes, sir.
- Q. Now, in addition to your office as president and business agent, are you a trustee of the union welfare and pension fund?

 A. Yes, I have been a trustee at least 22 years of the welfare and pension.
- Q. Are you acquainted generally with the operation of that fund, how reports are made and payments are submitted?

 A. Yes, sir.

MR. SHEEHAN: May this be marked for identification, please.

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(Document above referred to marked Respondent Union's Exhibit No. 2 for identification.)

BY MR. SHEEHAN:

- Q. Do you recognize that form, Mr. Leggio? A. Yes. This form is given to every employer that we have that employ men.
- Q. And what does he report on that form? A. He reports the man's name and how many hours he worked and paid to Welfare and pension and severance pay.
- Q. Does it cover the period the payment is made for? A. Yes, it does.
 - Q. Does that cover Victor Toran who just testified here? A. Yes, it

says Victor Toran, the report covers the period May 27, 1970 to June 30th, 1970. This has to be a monthly report.

Q. Is this the first such report that was made by J.R. Stevenson?

A. Yes, sir.

MR. SHEEHAN: I offer that in evidence.

MR. TRUNKES: May I see the original, please?

MR. SHEEHAN: I don't have it.

MR. TRUNKES: Your Honor, having been informed by the respondent that the original of which the document is a photocopy is in their office and it was difficult for them to get, we have no objection to the fact that this is a copy of what they claim they got it from.

The problem is, your Honor, that the employer is checking his records and subject to rebuttal on us to show this is not so.

JUDGE SEFF: Do you question the authenticity?

MR. TRUNKES: Well, we don't know.

Your Honor, if I might say something, you may recall Mr. Jovene, the first witness testified, that Mr. Toran was first employed in September of 1971. Now they are bringing a document showing and he testified, and they have a document to indicate he was employed in May of 1970.

I have been informed by Mr. Jovene that he checked with his office on that and he has informed me that they were in error on their statement to him.

And we are now trying to get the documents, the record they have.

Now, Mr. Jovene has told Mr. Golovensky and myself that this document or something like this would be prepared by him and in most probability it is accurate. But we just want, again, this to be subject to rebuttal.

274 At this point we don't know.

MR. SHEEHAN: I will offer it with that condition, if they want to challenge its authenticity.

JUDGE SEFF: It's received subject to the conditions that have just been

stated on the record.

(Respondent Union's Exhibit No. 2 for identification was received into evidence.)

BY MR. SHEEHAN:

- Q. Are you acquainted with an organization known as the Builder's Institute of Putnam and Westchester Counties, Inc.?

 A. Yes.
- Q. Tell us what it is? A. The Builders Institute is a contractors association formed by the contractors. And they are the ones that negotiate the contract for the contractors in the area.
- Q. Does Local 456 have a contract with that organization? A. They have.
 - Q. Do you also have a supplemental letter agreement from them?

A. Yes, sir.

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MR. SHEEHAN: May this be marked for identification.

(Document Respondent

(Document above referred to marked Respondent Union's Exhibit No. 3 for identification.)

BY MR. SHEEHAN:

Q. I ask you if you recognize that document? A. Yes, I do.

JUDGE SEFF: Would you identify it for the record, by date, please.

MR. SHEEHAN: Dated August 15, 1972.

JUDGE SEFF: Which month?

MR. SHEEHAN: August 15, 1972, sir.

A. August 15, 1972, right.

- Q. Is that agreement still in effect? A. Yes, sir.
- Q. And it contains an enclosure dated July 13, 1971? A. That's right, sir.
 - Q. And is that agreement still in effect? A. Yes, sir.

MR. SHEEHAN: I offer that in evidence.

MR. TRUNKES: I would like to know for what purpose, your Honor.

MR. SHEEHAN: Well, merely to supplement what was offered here as General Counsel's Exhibit No. 4, which indicated that the charging party here is a member of the Builders Institute and that institute has a contract with

456 covering the subject matter alleged in the complaint.

JUDGE SEFF: Do you want to be further heard, sir?

MR. TRUNKES: Let's assume that this is so, how is this relevant to the issue at hand?

JUDGE SEFF: Maybe he'll develop it if you give him a chance, I guess.

MR. TRUNKES: I assume it would be subject to connection.

MR. SHEEHAN: It would be at least the history of bargaining covering the employer as a member of the Builders Institute which was offered by general counsel on its affirmative case.

And I think the record should show what the complete agreement is between that institute and the respondent in this proceeding.

MR. TRUNKES: Your Honor, wouldn't it be more appropriate, rather than submit a letter from the Builders Institute to the Teamsters, the fact that if they do have a contract that we have the contract in evidence, not a letter from someone saying this is the contract, and here is a memorandum or supplemental agreement, unsigned by anyone.

This could be written by anybody at any time. If there is a contract between the Builders Institute and Local 456, that's what should be submitted.

JUDGE SEFF: Do you have a copy of the underlying contract?

MR. SHEEHAN: I know you were. But this is the same thing. The past wasn't long enough to contain their signatures.

So I offer at this time both union Exhibit 3, 2 and 3.

MR. TRUNKES: 3 is in.

287 MR. SHEEHAN: 3 and 4.

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I offer it - I offer at this time both Union Exhibit 3 and Union Exhibit 4, marked for identification.

(Respondent Union's Exhibit No. 3 for identification was received into evidence.)

(Document above referred to marked Respondent Union's Exhibit No. 4 and received into evidence.)

CROSS-EXAMINATION

BY MR. TRUNKES:

- Q. Referring to Respondent's Exhibit 2, Mr. Leggio, the sheet that shows Mr. Toran's hours of work and amount of wages from May 27th to June 30th of 1970, does the union also have a similar sheet for Mr. Toran for the times he worked for Stevenson from July 1st, 1970 until he retired?

 A. Does the union have that?
 - Q. Yes. A. Or does Toran have it?
- Q. Well, wherever you got Respondent's Exhibit 2. A. We get them from Stevenson. We supply them and they are monthly reports submitted by Stevenson to the welfare office.
- Q. Well, you have this this is a photocopy of something that's in your office, an original, right?

 A. Right.
- Q. Well, you also have one for Mr. Toran's employment subsequent to June 30th, 1970? Do you not? A. Right.
 - Q. Well -

MR. TRUNKES: Would it be proper, your Honor, to ask Mr. Leggio to supply us with the full account of these documents relating to Mr. Toran?

JUDGE SEFF: What do you need it for? You can keep asking for documents and we will have a record that will be formidable in size and proportion. I don't know what way it helps you or us with what we are

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trying to get here.

MR. TRUNKES: Again, this may not be necessary if Mr. Jovene comes up with documents from his office, hopefully, during the lunchtime or shortly thereafter.

MR. SHEEHAN: Union 2 is offered with that modification, that it should be subject to challenge.

BY MR. TRUNKES:

Q. Relating to Respondent's Exhibits No. 3 and 4, Mr. Leggio, I note that on the article 19, sub 3, the following sentence states, "For shops that do not employ a union teamster, the shop steward clause will apply only when the cost of construction is in excess of \$2,500,000."

That is correct, that statement, is that correct? A. Yes.

Q. Would you explain in practice what that signifies to your union?

A. It signifies, it is clarifying the other article in the contract where there should be a steward on a job at all times. But with the Building Institute, they negotiated with us to make an amendment, if a job is under two and a

half million dollars, we don't need no steward and we went along with it.

See, in other words, to benefit the contractors that are under two and a half million dollars. It doesn't call to have a man on the job.

- Q. And those above two and a half million dollars, it calls for a shop steward on the job?

 A. Yes. They agree the building Institute feels that there would be sufficient work for a man to be on that job.
- Q. But it doesn't A. Underneath that, under two and a half million dollars, they feel it shouldn't be. And that's why we corrected it.
- Q. But it doesn't mean that just because the job is two and a half million dollars or more that there is work for that man, does it?
- A. Well, when they negotiated the contract, that was their feeling, that they wanted a set price, instead of applying it to the original contract, is that it specified a shop steward on the job at all times. But we felt that in the

construction of buildings they wanted a leeway, so that's why we took it out and made an amendment it had to be two and a half million dollars.

- Q. Now, it is your understanding that this job in White Plains is over two and a half million dollars, is that correct?

 A. Yes, sir.
- Q. Now, is that the basis that the respondent, your union, insists that a shop steward be on that job site?

 A. Well, it's the Buildings Institute that negotiated a contract that wanted to follow them procedures.
- Q. Well, as I understood it, it's not that they want to have a shop steward on the site over two and a half million dollars. Their position is if it is less than two and a half million dollars, they don't want a shop steward?

 A. Yes.

MR. SHEEHAN: I submit that's an improper question because that's not what it said.

JUDGE SEFF: The agreement was read to the witness directly to the document. He assented to what was being read. He has a copy of the document in his hand. You said it means something other than what has been discussed here.

MR. SHEEHAN: I think the witness misunderstood what the question was.

MR. GOLOVENSKY: Well, your Honor, who is testifying here?

JUDGE SEFF: Let the witness. You continue with your examination, please.

MR. TRUNKES: If I can.

BY MR. TRUNKES:

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- Q. It is my understanding, and I think you stated Mr. Leggio, prior to this clause in the agreement, it was the understanding of your union that any shop site required a shop steward, any construction shop site, is that correct?

 A. Well, the steward is the first man on the job.
 - Q. But you didn't have a limit of two and a half million dollars, if it

was a hundred thousand dollars, a million, two million, you expected to have a shop steward on the job, is that correct?

A. That's then what the Building Institute negotiated.

Q. No, that's not the question.

JUDGE SEFF: He is not answering your question at all.

Q. The question is this, Mr. Leggio.

Prior to this amendment of the contract, isn't it a fact any time someone constructed some matter in your jurisdiction — and by the way, I don't think the record is clear, what is the jurisdiction of Local 456, area-wise?

A. Westchester and Putnam Counties.

Q. Okay.

In other words, you have different Teamster locals in the city and elsewhere, other counties, that handle out there? A. Yes.

Q. Those are the two counties. We are in Westchester County.

Isn't it a fact prior to this amendment of the contract any time a building construction site went up, somewhere with a general contractor, your union if you became aware of that, went over there and say, hey, you are constructing something, you need to hire some teamsters, you need a shop steward and we would like you to have somebody on the job site, isn't that the general practice your union follows?

A. No, sir.

- Q. It is not the general practice? A. No, sir.
- Q. What is the general practice on a construction site? Let's say a million dollar job is being constructed in White Plains today and you find out.

What is your position as far as getting a man on that job? How do you go about it or what do you do? A. Well, usually the business agent, if they see anybody working around a job, we go in and we check whoever the contractor is, and if they are non-union, we ask if they wou, I sign a contract

and employ a man when we need a man.

And they go along with it.

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- Q. Now, prior to this August 1970 supplemental agreement, when you went to any general contractor that you found and eventually or regardless of the price of the contract, you eventually negotiated something with them where a man was put on the job, if needed, correct?

 A. Right.
- Q. But after August 24th, 1970, when the Building Trades Employers Association negotiated a supplemental agreement, they limited it to two and a half million dollars, is that correct?

In other words, anything under two and a half million dollars, they are not going to automatically have the Teamster man on he job site?

- A. That's on a building construction, right.
- Q. And over two and a half million dollars, they will have a man on the job site?

 A. Yes.
- Q. Now, that doesn't mean, or put it this way, if a job site is two million four hundred thousand dollars in job site A and at job site B is two million five hundred thousand dollars, that doesn't mean in the first job site there is no work at all for a Teamster and in the second job site there is work 35 hours a week for a Teamster, does it?

 A. Well, according to the jobs, if

sometimes a million and a half, we get more work out of a two and a half million dollars than two and a half millions. It could be in reverse also. Whenever they need men, we give them the men and on the job site with two and a half million dollars or over, there is always work to be done on the job.

They found it to be true, the Association.

- Q. There is always work to be done on a job but not a full week's work necessarily?

 A. Oh, definitely.
 - Q. Definitely? A. Definitely. There would be work for a week.
- Q. Let's say between two million and two and a half million, how much work would you say is required there for a Teamsters?

 A. Under two and a half million.
 - O. Between two million and two and a half million.

MR. SHEEHAN: I object to this as speculative now.

JUDGE SEFF: Sheer speculation.

Don't answer that question.

MR. TRUNKES: Your Honor, I submit I am sure there are jobs where there are two million dollar jobs and the witness just testified at times a million and a half dollar job would require more —

JUDGE SEFF: I heard that testimony. That seems to cover your point.

BY MR. TRUNKES:

Q. But, actually, there are times under two million dollars where there is at times a Teamster required full time?

MR. SHEEHAN: I object to this as repetitious.

MR. TRUNKES: Well -

JUDGE SEFF: We have been all over that. You are reiterating what is already in the record. Enough is enough.

MR. TRUNKES: I have no further questions.

MR. GOLOVENSKY: I have some questions.

CROSS-EXAMINATIOIN

BY MR. GOLOVENSKY:

- Q. Mr. Leggio, is that the correct pronunciation? A. Well, he pronunces it Leggio.
 - Q. What do you prefer? A. Leggio.
 - Q. Leggio.

Mr. Leggio, referring again to this document, the same one as Mr. Trunkes, the agreement itself, the one that's been introduced, if a contractor is a member of this association, signs, and let's say he has a direct contract with you,

and he has a two million dollar job.

If he has any teamster work, does he have to use Teamsters, Local 456 Teamsters?

MR. SHEEHAN: I object to that.

MR. GOLOVENSKY: Your Hone: --

JUDGE SEFF: Aren't you going over material that has just -

MR. GOLOVENSKY: I'm not, your Honor, please. I'm really not.

MR. TRUNKES: I didn't ask that.

MR. GOLOVENSKY: I'm getting to a different point. I'm talking about the same clause but a different point.

JUDGE SEFF: Let's get to it and let's make some time.

- Q. Can you answer that or do you wnat me to repeat it? A. Please?
- Q. If a employer contractor is a member of the association or if he has a contract with your union and he has a two million dollar job, less than two and a half million dollars, and he needs a Teamster for whatever amount, you say some are less, some are more, he needs a Teamster, is he required to get a Local 456 Teamster, union Teamster?

 A. He'll sign a contract with us, yes. And then if they need a man, they call us for it.
 - Q. How does he get that Teamster? A. He calls up himself.
 - Q. And he calls the union hall? A. Yes.

- Q. And he says I need a Teamster for a day? A. Day, two, week, months.
- Q. Whatever it is, could be as little as a day at a time? A. Could be a day, five days, months, three months.
 - Q. And the union hall will send someone over? A. Yes.
- Q. And you heard Mr. Toran's testimony that before he came to Stevenson he was between jobs, he did that for a while, go out for one day, two days?

 A. Right.
- Q. Now, if an employer is over two and a half million dollars, he has a contract with your union and he needs the teamster, but for certain amounts of time during two or three months of a three-year job he only needs a teamster one day a week, can he also call up your hall and get that teamster for one day a week?

 A. No.

- Q. He has to have the teamster there full time? A. That's what they negotiated.
- 299 Q. Okay. Thank you.

Can I ask you one other question. Concerning the collective bargaining agreement. I'm showing it to you because I don't want to confuse you.

This is General Counsel's Exhibit 8, Article 19, page 9, No. 2.

"On outside construction job sites the employer shall supply a heated trailer with telephone for employees covered hereby."

Are you familiar with that clause? A. Yes.

Q. Is it not true that was the same clause in the previous contract, General Counsel's Exhibit 2?

MR. SHEEHAN: I will so stipulate.

MR. GOLOVENSKY: And it was in the previous contract before that? BY MR. GOLOVENSKY:

- Q. Were you familiar with that clause? Did you help negotiate that clause?

 A. Yes, I helped negotiate that clause.
 - Q. And was it a union objective or a company objective -

MR. SHEEHAN: I object to that as immaterial, whose objective it was. It was mutually agreed upon.

JUDGE SEFF: Let him finish his question.

- Q. Was it a union objective or a company objective that the company supply a telephone for the shop steward? Who wanted it? A. They negotiated it, both parties.
 - Q. Was this in your demands, did the union want the telephone?

 A. Yes.

Q. Sure.

Now, what's the purpose of the telephone?

MR. SHEEHAN: I object to that as immaterial, sir.

MR. GOLOVENSKY: Your Honor, can I be heard on that?

JUDGE SEFF: You can be heard.

MR. GOLOVENSKY: There are two arguments here as to what this man was actually supposed to do. The other claims that he was checking on Teamsters. And we have a telephone in the trailer. I'd like to know what that telephone was for. This is the man who negotiated.

JUDGE SEFF: What's it for?

- Q. Then what's the telephone for?

 A. Repeat your question.

 Why the telephone?
- Q. Yes. A. Well, usually why we want a telephone, if they if anybody wants any men or anything, you call into the union for additional men.
- Q. Well, can't that be done from the regular telephone? A. Well, the employers negotiated it that way and they were contented with it. They could have said, no, we don't want no telephones. It was just negotiated that way.
 - Q. What was the purpose of the telephone, why you demanded one, you just testified you wanted a telephone? A. If you could even get the man on the job or anybody wants to get a hold of him or anything at all. There is many a reasons why the phone is on the job site.
 - Q. Does it have anything to do with Teamster operation for the employer as opposed to steward operation? A. Yes. Helps the employer also by having it there. When they call for a man, you send him right down, and and that's the reason for it. They feel that it is justified having a phone there. They negotiated it.
 - Q. The phone was there in the case the employer wants to call the union hall for a man? A. Yes. Or lot of time the employer says get me a man and naturally he has to have a telephone there so he can call the union for a man, the steward, or the employer. Usually the employer calls for a man but sometimes they tell the steward to do it because they are too busy. Hey,

listen, call me a man for tomorrow. That's the reason for the phone.

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- Q. Is it your experience when you find an unorganized employer, construction, general contractor, and before you get him to sign a contract, before you have a steward on the job, is it your experience that he has no telephone of his own on the job?

 A. Usually that's the way it is. They supply the phone. They are only too willing. They negotiate it. They want to put it in.
 - Q. That's not my question.

Before they supply the phone to the steward, is it your – do they have another phone that they use for their own business on the job? A. That I don't know.

Q. You wouldn't know? A. No, I wouldn't know.

MR. GOLOVENSKY: No further questions.

MR. SHEEHAN: No redirect.

MR. TRUNKES: I have some more.

JUDGE SEFF: Make them brief.

CROSS-EXAMINATION

MR. TRUNKES:

Q. Mr. Leggio, you stated you participate in contract negotiations.

A. Yes.

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- Q. Did you participate in the last, most recent contract with J.R. Stevenson signed in July of 1973?

 A. Did I help negotiate that one?
 - Q. Yes. A. Yes.
- Q. Now, I bring your attention, Mr. Leggio, to what has been marked General Counsel's Exhibit 5, which is a document signed by Mr. Revellese,

the secretary of your union, on April 9th advising the company they had in effect were terminating June 30th and he wished to negotiate a new one.

Are you familiar with that?

- A. No, that's the secretary-treasurer.
 - Q. That's his job? A. Yes.
 - Q. There is no question that he A. He is the principal officer.
- Q. He automatically sends these letters out sometime before a contract expires, is that correct?

 A. Yes.
- Q. Are you familiar with General Counsel's Exhibit 6, a response to that letter on June 27th by Mr. Jovene, addressed to Mr. Revellese stated effective the end of June the contract is terminated, they do not have any more Teamster work to do? If they need Teamster work they will be happy to meet and confer for the purpose of negotiating a new contract.

That's in evidence as General Counsel's Exhibit 6. Are you familiar with that response?

A. No. He has to take care of that.

- Q. Mr. Revellese? A. He is the principal officer. And he handles that.
- Q. Are you familiar with the fact that starting July 3rd and continuing to July 9th of this year Mr. Korchma, with some assistance, was out picketing at the job site with a sign saying no contract?

MR. SHEEHAN: Would you have the record reflect the fact that general counsel is making the witness his own.

JUDGE SEFF: Not a word has been mentioned about picketing until this second.

MR. TRUNKES: The picketing has to do with this contract negotiation.

JUDGE SEFF: He said the principal officer, he is not the principal officer.

MR. TRUNKES: He said he helped negotiate this present agreement.

And prior to the present —

JUDGE SEFF: If you can tie it up you may continue. But let's get on BY MR. TRUNKES:

- Q. Are you familiar that Mr. Korchma was picketing the job site from
 July 2nd to A. That was done by our secretary-treasurer, the principal officer.
- Q. You are aware there was picketing this past July? A. Yes, I was aware of it. He told me about it.
- Q. Now, you tell me, what negotiation did you have with J.R. Stevenson on this last contract? How did you negotiate it, when? How long did it take?

 A. Well, usually what we do
 - Q. Not usually, sir.

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What did you do in this case? The contract according to the evidence we have was negotiated on the night of July 9th because on July 10th Mr. Korchma returned to work.

Now, there was picketing July 9th, on Monday. Tuesday morning the project manager was informed we have a contract, rehire Mr. Korchma and he went to work July 10th. That's what the evidence so far says.

Obviously a contract must have been negotiated July 9th in the evening or early July 10th.

Do you recall? A. Not a contract.

- Q. Beg your pardon? A. That was negotiated the 9th. That contract was in effect. What you are saying is, whoever met with Stevenson's men to resolve the problem must have been either Chip Revellese. It wasn't me. I never met with Stevenson. Me, as far as me meeting with them, I didn't meet with them.
- Q. So you didn't negotiate the contract with Stevenson? A. Yes.
 You asked negotiated a contract is a contract that's in effect of 1973, of July.
 - Q. Right. A. We negotiated that contract.
- Q. Now, how did you do that? A. By the Building Institute and the employers and all the contractors, they are so notified, to come in and negotiate a contract.

- Q. But the contract is signed for Stevenson by Mr. Knesich over here and signed by the union by Dominick Revellese. A. He is the principal officer.
- Q. Did you participate in the negotiating of this? Were you there when Mr. Knesich signed and when Mr. Revellese signed this contract?

 A. No.
 - Q. So you didn't really participate in this particular contract?

MR. SHEEHAN: Isn't that the same as the industry contract?

THE WITNESS: That's the industry contract. It's a uniform contract negotiated. It's negotiated by all the employers and the Building Institute. And if Stevenson was there, it was — it will show on the record that he was negotiating. I don't know whether he was there or not.

- Q. But does each employer sign the individual contract as we have in this? A. Yes.
- Q. Each employer does? A. Each employer signs it?
- Q. Now, are you saying the contract was not negotiated July 9th on Monday?

MR. SHEEHAN: I will so stipulate.

MR. TRUNKES: It was not.

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MR. SHEEHAN: This was a contract that had been agreed to prior to July 1 with the Builders Institute and those employers who attended negotiating meetings.

That then become the industry contract. And all employers in a similar situation were requested to execute copies of that agreement.

MR. TRUNKES: I am not accepting a stipulation, your Honor, if there is testimony on this point, that's fine.

Our evidence so far shows a contract expired June 30. The union was notified that there — that they would not renegotiate a new one because they had no teamsters.

Following that picketing commenced and as a result of the picketing the company signed a contract signed by Mr. Knesich and Mr. Revellese. It has nothing to do with a general contract with the Building Trades.

That is our position.

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If they want to submit evidence otherwise, fine. But I won't stipulate to what Mr. Sheehan just said. That's not our position at all.

MR. SHEEHAN: They put in evidence, sir. I am sure the judge is aware of it. Their membership in the Building Institute as of April of this year.

MR. TRUNKES: I just wanted to get the record on this matter clarified for my purposes and I have no further questions on this.

No further questions on this.

MR. GOLOVENSKY: I would like to concisely state on this last point that we represent the associations in this construction field and there are different kinds of members.

Some are bound by collective bargaining agreements, some are not.

JUDGE SEFF: That's not relevant to what you are talking about. And the history of your activities away from this situation is interesting to you but not to me.

MR. GOLOVENSKY: What I am saying, sir, is there is no evidence to what this membership was vis-a-vis these negotiations.

MR. SHEEHAN: No further questions.

JUDGE SEFF: Hearing no further questions, you are excused. Thank you for your testimony.

(Witness excused.)

ARPAD KORCHMA

called as a witness, having been first duly sworn, was examined and testified as follows:

JUDGE SEFF: State your name and address, please.

THE WITNESS: Arpad Korchma.

JUDGE SEFF: What nationality?

THE WITNESS: Hungarian.

DIRECT EXAMINATION

BY MR. SHEEHAN:

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Yes.

A.

- Q. Mr. Korchma, are you employed? A. Yes.
- Q. By whom? A. By J.R. Stevenson.
- Q. How long have you been employed by that company? A. I'd say about 18 months now.
 - Q. Who is your immediate supervisor? A. Right now?
 - Q. Yes. A. The new fellow there by the name of Bernie Bostick.
- Q. How long has that man been your superior? A. Well, a few months now. I would say maybe about figure three months or so.
 - Q. Prior to that, who was your supervisor? A. Nello Biordi.
 - Q. You were here yesterday when he testified, were you not?
- Q. What were your duties under Mr. Biordi? A. Well, I never had too much to do with Mr. Biodri but I did my duties as when I first came on the job. I was supposed to be a driver. And what I did was, they had a pickup on the job which they were using and they always came to me, was it all right to use it, which they used not every day but maybe two or three times a week, to move material back and forth on the job.

For example, like lumber, cement blocks, odds and ends. And often the general foreman, Sammy, I don't know his last name, he wanted to take a load out, for example, maybe a piece of equipment or lumber to a different job, like to Jersey, for example. I had a job in Jersey, in Middletown, they had a job. And also had a job in Grasslands, which they 30t lately. Been there a couple of months.

Q. Who made those movements, who transported it? A. A laborer did it.

- Q. Now, did you have any discussion with any of your supervisors concerning that method of operation?

 A. Well, this is the beginning of the job. First it was Frank Paratore was the project manager. I spoke to him.
- Q. What did you talk to him about? A. I asked him, I said why don't you get a truck. I said we got enough work around here to keep a truck busy all day. I said you have a laborer driving the truck. I said that's my work. I said if he does all this work, I haven't got nothing to do.
 - Q. You said that to Mr. Paratore? A. Right.

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- Q. What did he respond? A. He said we are going to try to get a truck on here.
- Q. When did that conversation take place? When did it take place relevant to the time you started to work for Stevenson? A. That took place about -I was there about a month and a half or two months. We were just pouring concrete then.
- Q. They were pouring concrete? A. They were pouring concrete at the time.
- Q. When you started, were you given any set of keys to any place?
 A. Yes. I had the keys to the gate. In other words, I had to open the gate in the morning and close them at night. The reason for this was the men that come in there with their cars would block up the center of the road, which is a narrow road.

We had concrete trucks coming in there. If anybody parked on either side of that road a truck couldn't get through. So Frank asked me to stay there from the morning on and make sure nobody blocks the entrance to the gate, you know.

And also like sometimes I would be down back in the concrete trucks once in a while. Somebody would pull in with a car and have to go looking all over sometimes a half hour before you find him. But you had to be there most of the time to make sure that the roads were clear for them.

- Q. Approximately how many cars were brought into the job site while you were, on a daily basis?

 A. I will say around 60.
- Q. In addition to that, were you assigned any other duties by Mr. Paratore?

 A. No, there wasn't.
- Q. Did you have any duties in connection with the cement trucks you mentioned?

 A. Yes, I used to back them down, make sure the road was clear. In other words, when they came in that narrow road, I had to back them in so they wouldn't hit the cars.
- Q. Would you tell us what you did in having that function accomplished?
 A. Yes, I would be in back of them, when they were backing up. In order for them not hitting the cars, I used to motion them either this way, to your left or right or straight.
 - Q. What was the contour of the ground, was it level or A. No. It wasn't level. It was a little ruts and holes in the ground, everything.
 - Q. Was there any incline in the ground, the surface of the ground?A. No, a slight incline maybe.
 - Q. How many times did you have a conversation with Mr. Paratore concerning the fact that the laborer was operating a pickup truck carrying merchandise around on the job site as well as other job sites?

 A. Three or four times.
 - Q. When for the first time did he say that he was going to try to get a truck?

 A. When I first went there. I was there about a month and a half.
 - Q. Did he ever get a truck? A. No.
 - Q. Now, did you ever have a conversation with Mr. Biordi in which you said that -

MR. GOLOVENSKY: Objection.

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Q. – if he got a truck that some other driver would have to operate it?
 A. Never.

MR. GOLOVENSKY: Objection.

- A. Never in my life.
- Q. Did Mr. Biodri ever tell you that he had recommended that the truck be secured?

 A. He said he was going to try to get a truck. He talked to the company. He told me he was going to, I don't know.
- Q. When was the last time you spoke to anyone representing the company concerning a truck for the purpose of your use?

 A. Well, I heard they got a job in the county, in Purchase, I think it was.

First I talked to the foreman, Sammy, which I talked to him several times in the course of the time I been there about the truck, because this man was actually moving, maybe not every week, but sometimes two or three times, and sometimes take him a half day to take blocks across the way or whatever, moving the buckets around for the concrete, from one end to the other.

And I asked him about it and, I mean, they didn't seem to care, it's what it looked like to me.

Q. Well, Mr. Biordi testified here that in July of this year he had recommended that a truck be secured by the company.

Is that the time you spoke to him? A. About that time. I can't remember offhand.

MR. GOLOVENSKY: Your honor, there is a point where leading becomes testify. This is a witness on direct.

JUDGE SEFF: Overruled.

Continue.

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Q. Now, you say you opened up the gate in the morning.

What did you do with that gate at night?

A. I closed it when the job was done.

- Q. What did you do with the keys? A. I kept them.
- Q. Take them home with you? A. Yes.

Q. How long have you been engaged in the construction industry.
 A. 42 hours.

Q. Have you reported for work each day that you were scheduled, from the time you started to work till the present time?

A. Yes, I have, except for a time I was sick for a week.

Q. And when you were sick, did you report to the company?

A. Yes, I told him.

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Q. Who did you report to? A. I think it was Nello, Nello Biodri, at the time.

Q. He was the project manager at the time? A. Yes, he was.

Q. And when you got well, did you report that you were ready to report for work? A. Right.

Q. What instructions were you given? A. None at all, the same as I have been doing. Nobody approached me sign I been there, a year and a half, hardly.

Q. Did you keep any specific time records as to how many hours or days in a period that you have worked there that this laborer, whom you described, has been operating that pickup truck?

A. No, I didn't.

Q. How many days has that pickup truck been brought on to the job site? A. Almost every day. He used it for transportation. And while he was on the job site, occasionally they used it.

Q. During the period that you have been there, has the company secured any other type of automotive equipment on a lease basis? A. No.

Q. Have they ever discussed with you their desire to do so?

A. No.

Q. Have you ever given any instructions that if they were to do so that you could – you would have to get another chauffeur to operate it?
A. Never even spoken to me about it.

Q. On the contrary, you have asked for instruction so that you could

accomplish the work you were there to do? A. Yes.

- Q. Now, how many job sites does Stevenson have in Westchester County other than White Plains, or has had in the past 18 months or since you have been there?

 A. The only two I know is the courthouse job and the Grasslands, that I know of.
- Q. You mentioned Purchase a little while ago. A. That job hasn't started yet. I think it's in the process. I don't know if they have it technically yet, but I heard they got the job.

MR. SHEEHAN: That's all the questions, your Honor.

Your witness.

MR. TRUNKES: Your Honor, I am going to let Mr. Golovensky start cross-examination.

CROSS-EXAMINATION

320 BY MR. GOLOVENSKY:

Q. Mr. Korchma, you were here throughout the testimony in this proceeding?

A. Yes.

MR. SHEEHAN: No, I think that's incorrect.

MR. GOLOVENSKY: Wait. Yesterday afternoon I started. Noontime I cam in.

- Q. Since noon? A. After lunch, yes.
- Q. Were you ever asked not to come to the job site on a holiday?

A. Yes.

- Q. Did you come? A. Yes.
- Q. Did you insist on coming? A. I didn't insist, no.
- Q. Well, were you ever asked not to come? A. Once.
- Q. And what happened? A. I came.
- Q. Who asked you not to come? A. Well, I heard there was a truck going to be moved around that day. Any times a truck on the job, he moves around, I come in.

- Q. Who asked you not to come in? A. I think Tony.
- Q. And you just came anyway? A. Yes.
 - Q. Did you ask for overtime pay? A. Well, it was a holiday, yes.
 - Q. And what was Tony's role on the job? What was his job?
 - A. I think general superintendent.
 - Q. He told you not to come and you came? A. Yes.
 - Q. Did you get overtime on the job? A. Yes.
 - MR. SHEEHAN: You mean premium pay?
 - THE WITNESS: Premium pay, yes.
 - Q. Have you told us everything you do on this job? A. Everything that I yes.
 - Q. Do you ever check drivers to see if they are members of the Teamsters?

 A. When I first came there for a couple of months I checked them.

 Then I got to know them all so I never bothered. They are usually the same drivers who came in.
 - Q. If a new driver comes in? A. I check them once in a while?
 - Q. You didn't mention that earlier? I was wondering why you left
 it out. A. You didn't ask me about it, did you?
- 322 Q. Do you have a telephone in the trailer? A. Yes, I do.
 - Q. Do you use it extensively? A. I don't think I use that phone twice a week. Twice a week I don't think I use it.

And since I been there a year and a half, I don't think I used it ten times. But our general foreman, Sam, and also twice the timekeeper were in there putting their time, their phone was out of order upstairs in their office, so they came down and used my phone, they were putting the time in for the men which took sometimes a couple of hours.

Twice it happened.

- Q. Twice it happened the phone was out of order? A. Yes.
- Q. Other than that, who in fact uses your phone? A. Let me tell

you what happened. I always had my office door open, with the lock off the phone. I never had a lock, excuse me.

And I went in there one day and I caught a laborer using the phone. So I told him, what right have you got to come in here and use this phone, this is private, this is for the company. This is only for business.

He didn't say anything and walked out. God knows how many times he used it before.

Immediately I called Joe Galgano into the office. I called Galgano and told him about it and he told me to go out and get a lock for the phone.

- Q. Do you have a lock for your trailer? A. Yes.
- Q. Do you ever lock the trailer? A. Always.
- Q. Is there a way to get to the trailer if the phone is locked?
- A. Sammy has a key. He has a key and I have a key.
 - Q. Other than Sammy? A. Nobody else.
- Q. So your testimony is aside from the time it was broken, that everyone else, maybe some laborers are using your phone?

 A. I don't know.

 I caught this one man one time. I don't know
 - Q. Other than that, did you ever catch anyone? A. No.
- Q. How often are you in the trailer? A. Very seldom. I've not there an hour a day. I go in to eat in the morning when I go in the morning, I go out and walk around the job. If a case, like a truck is there, was wanting to use it, I'm always by Sammy the foreman.
- Q. Is the trailer heated? A. Yes.

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- Q. And during the winter you are only in there an hour? A. That's all. I be out all winter in it. I go in to get warmed up once in a while, you know.
 - Q. Let me ask you this.

How much did you earn, gross earnings, in 1972, to the best of your recollection? A. It's around \$20,000, I think, around that.

- Q. Are you the shop steward? A. I'm the driver and the shop steward.
 - Q. Are you the shop steward? A. Yes.
- Q. Are you familiar with the contract as shop steward? A. Most of it.
 - Q. Have you been why did you work before Stevenson?
- A. Poirier and McLane.
 - Q. What did you do there? A. A driver and shop steward.
 - Q. You were shop steward, too? A. Yes.
 - Q. How many drivers were on that job? A. We had about nine.
 - Q. Nine. A. Nine out of the yard and we had outside job sites.
- Had maybe sometimes ten, fifteen, twenty, all total.
 - Q. Where did you work before that? A. Nowhere.
 - Q. You were there for how many years? A. 42 years.
 - Q. Was there a time when you wren't shop steward going back?
 - A. When I started, yes.
 - Q. And what did you do? A. I drove a truck.
 - Q. What did your duties consist of? A. Well, I delivered materials from the yard, our job was like all material came to my yard, went to different jobs over in Jersey and all over.
 - Q. So you did carting between sites? A. Right.
 - Q. Anything else you did? A. I drove trailers before I came to -
 - Q. I am asking you that job, before you were a steward, you also drove trailers, this employer?

 A. Yes. In other words, I moved material with whatever truck was available, we had to use.
 - Q. Anything else? A. Not that I know of.
- Q. Did you check drivers before you were a steward? A. Yes. Oh, no, no.
 - Q. Were you in charge of parking before you were steward? A. We

had no cars on the job. I was working out of a yard, delivering materials to the jobs. This was my job.

- Q. Now, you testified that there were days when you were away from the site other than the time you were sick.

 A. I was aware from the site?

 Only times when I was sick.
 - Q. Well, didn't you testify something about Jersey, New Jersey?
- A. The laborer drove the truck to Jersey with the material.
 - Q. Yes. A. He went alone.
 - Q. Now, you say the laborer was driving this truck? A. Yes.
- Q. How did the laborer get to the job from his home? A. With his truck.
 - Q. So this was his means of transportation? A. I imagine so.
- Q. Now, I think you testified that at one time you protested if they don't let you drive you will have nothing to do and you wanted to drive?
- 327 A. I didn't say that.
 - Q. I think you did. A. All I asked them was if they can get a truck on the job where I could help them out, instead of the laborer doing the driving, I'd do it with the pickup, if they got a truck.
 - Q. And how many hours a day do you figure you'd be doing that?

 A. Sometimes they worked a half day. There was some times when they worked the full day. Then there was times maybe they worked two hours.
 - Q. There were times when they didn't work at all?

 A. There was says once in a while they didn't work at all.
 - Q. Didn't you in fact testify they normally work about two days with this truck, on direct just now? A. Two days?
 - Q. Two days a week. You don't remember that? A. Well, sometimes they worked two days. Sometimes they wouldn't work at all that week. Then they would work three days. It all depends. The time I be there till right now, it all varied, you know.

- Q. And you wanted to do that driving? Did you ever contact the union and tell them the laborer was doing your driving?

 A. Yes.
 - Q. What happened? Who did you contact? A. Harry Williams.
- Q. And what happened? A. Well, I told them they haven't got a truck on the job and I said they have the laborer driving the turck and I said as long as they don't got the truck, I don't see why they can't move it, they got to move material around, don't want to hold them up. He said, that's right. Let them use it.
- Q. So there was no formal grievance from the union to the company about that truck?

 A. No.
- Q. Who was driving that truck? A. A fellow by the name of Tony Vesey.
 - Q. Who is he? A. Laborer.

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- Q. Is that the owner of the truck? A. Yes.
- Q. When he was not driving the truck, what was he doing? A. Laboring, I imagine.
- Q. Well, did you have occasion to observe it? You said you are not in your trailer?

 A. Yes.
 - Q. You are walking around the job? A. Yes. He was laboring.
 - O. So when he was not driving, he was laboring? A. Yes.
- Q. When you told the company that you wanted to do the driving, did you suggest what you would do on the times when there is no driving?
- A. I didn't think of it that way.
 - Q. I am asking as a question of fact.

Did you mention anything about that? A. No.

Q. As a shop steward with the contract — familiar with the contract, can you tell us what kind of work comes in the jurisdiction of the union?

For example, you saw that a laborer, you say, was doing driving of materials, sometimes a half day, sometimes two hours a day, sometimes two days

a week, but he was doing it.

And you protested to the company, you said that's my work?

A. Yes.

- Q. Now, can you tell us what kind of work would fall under the Teamster jurisdiction?

 A. Driving the truck, moving material around the job.
- Q. You mean by hand? A. With the truck moving the truck, moving material wherever they wanted on the jobsite, if it's lumber, blocks, whatever. And then if they had anything to take out, like different jobs they had, I was available there to do it, if they had the truck.
 - Q. Are you familiar with the union practice of or the procedure described earlier whereby an employer who doesn't have to have a Teamster steward on the job but wants to use a Teamster for a day or two, he has a contract with the Teamsters, calls up the union hall? A. Yes.
 - Q. Have you ever been in the union hall like that, or have you always had a permanent job?

 A. I was always with the same company.
 - Q. Now, that company you were with before, what was that?A. Poirier and McLane.
 - Q. Did they always have a certain number of Teamsters on the job, or did that number change according to their needs? A. Well, when it slowed down a little bit, they lay a couple of men, seniority list there, but the average time we had a lot of work throughout the years and always kept the same drivers on.
 - Q. Sometimes you had six drivers, sometimes ten, I think you said.
- A. In the yard there was six steady drivers that moved material, we had jobs in New Jersey, Long Island, Pennsylvania, we had six steady trailer drivers in the yard.

We also had outside jobs where there was, for example, excavating, we had dump jobs, Euclids, and then we had extra drivers for that.

BY MR. GOLOVENSKY:

- Q. How many times a day do you speak to Mr. Bostick? A. I don't even see him half of the time.
- Q. Is he on the job? A. Yes, he is on the job. He is in the buildings.
- Q. Let me ask you this. So your testimony is how many times a day, hardly any?

 A. I see him walking up and down the job when I'm out there.
 - Q. How many conversations do you have with him on a typical day?
- A. Very few. He says hello, good morning.

MR. GOLOVENSKY: I have no further questions at this time.

332 MR. TRUNKES: I have some.

JUDGE SEFF: Well, you see, I thought he was going to do the interrogation.

MR. TRUNKES: Well, your Honor, unfortunately, the experience we've had so far, in my opinion a lot of stuff I ask Golovensky went over again repetitively. I would rather have him ask and what he didn't cover I thought I'd ask.

JUDGE SEFF: Okay.

CROSS-EXAMINATION

BY MR. TRUNKES:

Q. Now, you described your duties while you were working, Mr. Korchma.

In the average day, you work eight hours a day more or less?

A. Yes.

- Q. What are your basic hours? A. Eight hours.
- Q. When do you come and when do you leave? A. I start 8:00 in the morning till 4:30 is the hours.
 - Q. Ever come before 8:00 o'clock? A. In the beginning when I

first started working when Mr. Paratore was there. I would say about a year I was starting 7:00 in the morning. Then there was overtime at night, the concrete trucks would be finished.

Q. Have you been working overtime in the last few months now?A. No.

Q. Okay.

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Now, of this eight-hour day that you worked, and correct me if I'm wrong. I think you stated that you open the gate, you close the gate.

A. This is in the beginning now, not now.

Q. Now, you don't close it — A. When Mr. Biodri came in there, I was doing it for about a year. Mr. Biordi came, he said Al, we are not too busy now, you don't have to worry about the gates, leave them open, which I did, since they were —Nello Biordi came in there. I haven't been doing it since he was there practically.

Q. Okay.

Let's just take it for the last four months, since July 1st, what have you actually been doing since July?

Correct me if I am wrong, sir. Isn't it a factor that for a week in July, the first week of July, you weren't working there?

A. I think I was sick in July.

- Q. Let me refresh your recollection. A. Oh, yes, the strike.
- Q. You were picketing? A. Yes.
 - Q. Then there came a time you went back to work? A. Yes.
 - Q. From that time to this time, what does your work consist of?

A. The same as before, I go on the job, if they have to use the pickup, which they been doing right along, they would always come over to me and say they have to make a move here, I let them do it. Sometimes I go with them. If they go out on the highway, I let them go to different jobs, if they want it.

- Q. That is what somebody is doing, somebody else? A. Right.
- Q. What are you doing over there? A. Over there, still working the job.
- Q. What are you doing? A. Right now it is very slow, not much on the job.
 - Q. You were here yesterday at noontime? A. Yes
 - O. Did you work Tuesday all day? A. This week?
 - Q. Monday, Tuesday. A. Yes, I worked all day Tuesday.
- Q. Tell us what you did Monday and Tuesday of this week?
 - A. Same thing I did every day.
 - Q. I want to hear what you do every day, tell us what you did Monday and Tuesday so we get an hour -

You punch the time clock when you come in? A. Yes.

JUDGE SEFF: Then you go where, to your trailer?

THE WITNESS, I go walk the job.

JUDGE SEFF: You walk the job?

THE WITNESS: Yes.

JUDGE SEFF: You walk around?

THE WITNESS: Yes.

JUDGE SEFF: What do you do when you are working, observe what is going on?

THE WITNESS: Observe what goes on in case they have to use the truck, I am there, right there, they ask me. I am always around when they need me, that's the way I looked at it.

- Q. When is the last time you used the truck? A. The last time they used the truck?
- Q. The last time you used the truck. A. Well, I didn't use the truck at all. The laborer drives it. Last week.
 - Q. Last week what? A. Last week he was using it two or three

336 times.

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- Q. Did you drive the truck? A. No, I did not drive the truck.
- Q. The question is when is the last time you drove the truck?
- A. He wouldn't let me drive it. He drives the truck.
- Q. Do you remember, was there any time that you drove a truck for them during the time you are working there?

 A. I drove it a couple of times.
 - Q. When was the last time you did it? A. Oh, a few months back.
 - Q. Before July, right? A. Yes.
- Q. Now, since July, are you not driving the truck? You don't up and shut the gates, right?

 A. Right.
- Q. You don't park the cars any more, do you? A. There is no -1 check them in the morning, make sure they get in, in other words, people park in the middle of the road, on the highway and I am there in the morning, even 8:00 o'clock, some come in 8:30, make sure they get their cars out of the way, I still do it.
 - Q. So from 8:00 to 8:30 or so you check the cars? A. Right.
- Q. From 8:30 to 4:30, hat did you do Monday and Tuesday of this week from 8:30 to 4:30?

 A. Just go around on the job, checking the job.
 - Q. I don't understand, checking the job for what? A. In case they have to move anything around, the pickup is there, last week, till this week rather. And I'm always around in case they have to use the truck, a lot of time they ask me during the second period of the week, can we use the truck for this and for that, I say okay, go ahead.
 - Q. What did you what if you didn't okay it? A. I always do.
 - Q. Suppose you didn't, what would happen? A. I never refused them.
 - Q. Who asked you if they can use the truck? A. The general foreman.

- Q. Who is that by name? A. Sammy, I don't know his last name, Mariano, Tony would know.
- Q. Every time, in other words, the truck is being used by the company, Mr. Sammy Mariano asks you if they can use the truck?

 A. Now, most of the time, yes.
- Q. In all instances the last four months somebody else is doing the driving of the truck, not you? A. Right.
- Q. Outside of him asking you what they can do with the truck, what else do you do?

 A. That's it.
 - Q. That's it.

Now, I believe you testified that when you first were hired there was no lock on the telephone?

A. Yes.

- Q. And there was a time later when you spoke with Mr. Galgano that a lock was put on?

 A. When I caught this man using the phone.
- Q. When was that? A. Oh, that was over a year ago, about a year and three months, something like that.
- Q. Sometime A. The duration when the concrete was going up, , they were still pouring concrete.
 - Q. Now, was this before Mr. Biodri became project manager?

A. Yes.

Q. Is it a fact that you replaced Victor Toran when he retired?

A. Right

- Q. In other words, he retired on a Friday, let's say, and you came to work Monday?

 A. Somewhere around I think it was on Tuesday.
- Q. When you came to work there was no lock on the telephone?

A. No.

- Q. And there was no lock until sometime later? A. I put it on.
- Q. When you saw this man using the telephone? A. Right.
- Q. And how many months were you working before this incident

happened? A. I will say about three months.

- Q. You have the key to the lock? A. Now I have it, yes.
- Q. Who else would have the key to the lock? A. Sammy the foreman.
- Q. Before that there was no lock on the telephone? A. When I got there there was no lock?
- Q. I believe you testified that after you were hired you saw there was some driving being done and you asked somebody from the company if you could do the driving, is that correct?

 A. Yes.
 - Q. Who did you ask? A. Frank Paratore.
 - Q. What was his answer? A. He is going to talk to the company.
- Q. Then you didn't hear from him? A. No.
 - Q. How many times did you ask to drive? A. Well, I asked Frank and I asked Nello once. And just lately about two months ago, a month and a half ago, I asked Tony about it. I said they are starting this new job, be a good idea if they get a pickup there which they can use every day, you know.
 - Q. What did Tony say? A. Tony said I don't think they will put a truck on. That's what he told me, to forget it.

JUDGE SEFF: Let me ask you: If they put a truck on, you didn't intend to drive it?

THE WITNESS: Yes, I did.

JUDGE SEFF: You didn't need an extra Teamster man to drive it?

THE WITNESS: No, that's my job. I thought I was hired for that.

JUDGE SEFF: Thank you.

BY MR. TRUNKES:

- Q. Now, when you say that you watched the cars parked in the morning and then after that you walked around to see if trucks were being used and that's all you were doing?

 A. Right.
 - Q. Isn't it a fact that you also you don't check the drivers coming

- in any more, you know them? A. I know most of them, yes.
 - Q. And new ones come in, you do check those, don't you?

A. Yes.

- Q. What did you check for? A. To see if they have a Teamsters book, union book.
- Q. Who asked you to do that? A. I have been doing it for 40 years on all different jobs.
 - Q. Why? A. It's been a policy with me.
 - Q. With you? A. Yes.
 - Q. And nobody from Stevenson asked you to do it, did they?

A. No.

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Q. All right.

Now, you say it's a policy with you? A. Right.

- Q. What are you doing it for? A. Well, to make sure the man is a Teamster.
- Q. What if he wasn't a Teamster? A. If he wasn't a Teamster, I mean, any time a man came on our job right here, and he wasn't a Teamster I let him, unload.
- Q. You what? A. I let him unload, that was it. He didn't have a book. I checked him, he didn't have a Teamster book. Well, where are you going, right in that corner. I let him unload.
 - Q. You don't send him back? A. No.
- Q. What's the difference whether he had a card or didn't have a card if you are going to let the guy without the card unload? A. Well, what's the difference? I prefer a Teamster on the job if he is available.
- Q. But one comes at 8:30 in the morning he has a card, let him unload?

 A. Yes.
- Q. Another comes at nine o'clock and he doesn't have a card you let him unload, what's the difference?

 A. The difference is you can't put a

man off a job, I never did in my life. The man is entitled to work. And there are a lot of times they come from out of state and out of state they are not Teamsters, so he came on, you can't put him off the job. I never tried it. I just let him unload.

- Q. So you let him unload? A. Yes.
- Q. So why do you even bother asking them if they have a card?

 A. I don't bother now, I told you.
 - Q. But you done it? A. In the beginning, yes.
 - Q. Why? A. Because the job is a union job. Stevenson agreed to have all union men come on the job with materials in their contract, so I just check them out once in a while. I did in the beginning.
 - Q. But when you saw one who didn't have a card, you still let him go by?A. That's right.
 - Q. Did you tell anybody about it? A. I told Frank Paratore one time. He said well, you let the guy in. I said sure, I won't bother him.
 - Q. Did you call the union on the telephone and say hey, there is a truck driver here without a Teamster membership?

 A. No, I never call the union hall.
 - Q. You don't call the union every day? A. Not every day, no.
 - Q. You heard Mr. Toran testify this morning?

 A. I don't know what then he did.
 - Q. You don't agree with that he said? A. I didn't say I didn't agree.

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- Q. You didn't do what he said he did? A. Yes, that's right.
- Q. Have you had a situation where a man not from out of state, but let's say in the metropolitan area, made a delivery but was not a Teamster member?

 A. Most of them come in, they are all Teamsters, whether from out of town or the county, they are mostly all Teamsters.
 - Q. But you stated sometimes someone will come in who is not a

Teamster? A. It hasn't happened lately.

- Q. When was the last time? A. About six months ago or so, five months ago.
 - Q. And you let the man unload? A. Yes.
- Q. Did he come back? A. I don't know if he ever had any more material to come in.
 - Q. Suppose he came back a second time? A. I wouldn't bother him.

 JUDGE SEFF: Don't shake your head. Give a word for the record.
- 345 THE WITNESS: I'm sorry.
 - Q. The answer is no? A. The answer is no, right.
 - Q. Now, Mr. Korchma, I believe you stated that nobody from Stevenson told you to do that, you did that as a matter of policy, is that correct?

 A. Right.
 - Q. Did anybody from the union tell you that that was part of your duties?

 A. No, they never told me. I been doing it for 42 years. I been on a lot of jobs on the outside, you know. And I made it a habit to check the trucks like that, make sure they are Teamsters, according to the contracts.

MR. TRUNKES: I have no further questions.

MR. SHEEHAN: No questions.

MR. GOLOVENSKY: Can I have just one or two, your Honor.

CROSS-EXAMINATION

BY MR. GOLOVENSKY:

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- Q. Did you check drivers to see if they were Teamsters before you became a union steward? A. No.
 - Q. Well, 42 yes you been employed? A. Yes.
- Q. But you weren't a steward all that time? A. We weren't union all the time, either.
 - Q. When there was a time you were union and not a union steward?

A. Yes.

- Q. Did you check drivers then? A. I checked them occasionally.
- Q. I mean regularly? A. Well, when the truck come in, when there is no truck in, you can't check them, right. When the truck came in, I used to check them once in a while.
- Q. Even when you weren't a steward? A. Yes, when I worked for Poirier and McLane.
- Q. When the steward was there? A. When he was out on the job somewhere.
- Q. If he wasn't out on the job somewhere? A. He would check them.
 - Q. So if you were both there, he would check them.

MR. GOLOVENSKY: No further questions.

MR. SHEEHAN: No questions.

HEARING OFFICER: Hearing no further questions, you are excused.

Thank you for your testimony.

(Witness excused.)

MR. SHEEHAN: The union has no further witnesses, Judge.

347 JUDGE SEFF: Any further testimony?

MR. TRUNKES: Yes, your Honor.

350 MR. TRUNKES: We have a rebuttal witness I would like to call.

BERNARD WILLIAM BOSTICK

called as a witness, having been first duly sworn, was examined and testified as follows:

351 JUDGE SEFF: State your full name and address, please.

THE WITNESS: Bernard William Bostick, 23 Crossbar Road, Hastingson-Hudson, New York.

DIRECT EXAMINATION

BY MR. TRUNKES:

- Q. What's your occupation, Mr. Bostick? A. Project superintendent.
- Q. Where? A. At the Westchester County Courthouse complex, White Plains, New York.
 - Q. And for whom are you employed? A. J.R. Stevenson Corp.
- Q. How long have you held this position? A. Approximately three and a half months.
 - Q. Had you been employed by Stevenson before then? A. No, sir.
- Q. And you know the name of the gentleman you replaced on the job?A. Yes, sir.
 - Q. Who is that? A. Mr. Nello Biordi.
- Q. Do you recall how many times he left or did you come on before he left or what?

 A. When I came on we had a break in period of approximately three weeks before Mr. Biordi left.
- Q. So you and he worked for three weeks together and then he left and you continued on in his position? A. Right.
 - Q. How many employees do you supervise at the job site? A. Approximately six or seven at this time.
 - Q. Do you have any employees who are members of the respondentLocal 456?A. What is Local 456?
 - Q. That's the Teamster local respondent in this case? A. No.
 - Q. Do you know who Local 456 is? A. It's the Teamster's local, I understand.
 - Q. Have you ever dealt with anybody from the Teamster local, any representative, business manager? A. No, sir.
 - Q. Could you know if any employees are members of that local on the job site?A. Not to my knowledge.
 - Q. Do you have an employee working there by the name of Arpad Korchma? A. Yes.

- Q. And I believe he is the gentleman sitting in the room over here.
- 353 A. With the red sweater?
 - Q. Yes. A. Yes.
 - Q. Do you recognize the gentleman? A. Yes.
 - Q. Is he one of the employees at the job site? A. He is one of the employees at the Teamster job, at the Teamster trailer.
 - Q. Well, is he a teamster? A. As far as I know, he is.
 - Q. Do you know what local he belongs to? A. No.
 - Q. You supervise him, don't you? A. No, I don't.
 - Q. You are the project manager? A. Yes.
 - Q. And you supervise all the employees under, who are employed by J.R. Stevenson? A. Yes.
 - Q. Isn't he employed by J.R. Stevenson Corporation? A. Not that I know of. He doesn't get a paycheck from us.

I don't - I don't really know whether he does.

- Q. All right. You say you don't know what he does? A. That's right.
- Q. What do you see him do? A. As I understand, he is a Teamster representative on the job and does check trucks coming in and off the job to see if the drivers have a Teamster card.
 - Q. What else have you seen him do? A. That's it.
 - Q. Have you ever instructed him to perform any work? A. No.
 - Q. Has anybody instructed you to ask him to perform any work. A. No.
 - Q. Has he ever come up to you and asked you if he can do any work?A. No.
 - Q. Do you have a parking area where employees come in and park their automobiles?

 A. Yes, we do.
 - Q. Is there anyone who tells them where to park the automobiles?

 A. No. No. Never have. All the men pick a spot that's empty, that's about it.

- Q. Have you seen Mr. Korchma direct these people where to park their cars? A. No.
 - Q. Have you ever visited him in his trailer? A. Yes.
- Q. When you visited him, how often do you go in there?
 - A. The last time I was in there we had the trailer that he had been occupying to be sent to another job, so I asked him if he wouldn't mind moving out of that trailer into another trailer. That was the last time I discussed anything with him in his trailer.
 - Q. What was his response? A. He said it was fine with him, as long as he had another trailer in that immediate area.
 - Q. Were you ever instructed by either Mr. Jovene or any other of your supervisors of Stevenson Corporation that you should give Mr. Korchma certain work or not?

 A. No. Never.
 - Q. Did Mr. Biordi, your predecessor, tell you what his functions were supposed to be? A. No.
 - Q. As far as you know, he wasn't even on the payroll? A. Well, let me put it this way: I don't handle my own payroll. My bookkeeper handles the payroll. It may well be that he had a payroll check but at this point I can't say definitely yes or definitely no. I would I would be more inclined to say yes but I'm not that sure.
 - Q. By the way, Mr. Bostick, did you ever see me before fifteen minutes ago?

 A. No.
- Q. Did you ever see Mr. Golovensky before ten or fifteen minutes ago?A. No.
 - Q. Did you ever speak to either one of us before? A. No, not until I met you in the corridor.
 - Q. Did at any time when trucks arrived that Mr. Korchma that you said you saw checking, did he report to you what the status of the truck was or the driver?

 A. Recently there was a place that came in, probably two

or three weeks ago, a truck from Flesh Metals Company, and he told me the driver was a non-union Teamster driver.

- Q. Did he say anything besides that? A. Well, he said the truck had been making deliveries to the job for Flesh Metals two or three possible deliveries before that and they wanted this man to be a Teamster driver.
 - Q. Korchma said that to you? A. Yes.
- Q. And what was your response? A. Well, my response was to him that it was a subcontractor of J.R. Stevenson and that this subcontractor should abide by the Local laws or union laws, whatever governing the area and I did not know that the man did not have a Teamster card.
 - Q. Did he reply to that? A. Yes.
- Q. What did he say? A. He said that the man should have a Team-ster card. Well, I said, I have only been here a short time. I don't know how the deliveries have been going on but we subsequently made the delivery. The man from Flesh Metals was allowed to make the delivery.
 - Q. Do you recall any similar incident in the two or three months you have been working there?

 A. No.

MR. TRUNKES: I have no further questions.

MR. GOLOVENSKY: I have some questions, your Honor.

DIRECT EXAMINATION

BY MR. GOLOVENSKY:

- Q. Now, as project manager, do you supervise J.R. Stevenson employees?A. Yes.
- Q. Is there any J.R. Stevenson employee who is supervised by somebody else who is not under your authority? In other words, let me rephrase that.

Are you in charge of all J.R. Stevenson employees on the site?

A. Yes.

Q. Now, you testified that you have no occasion to give any directions

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to Mr. Korcham, is that correct? A. Right.

- Q. Now, there has been testimony in this proceeding, and you have not been present, concerning how much time is spent on the job in transporting materials or equipment from one spot to another on the job, jockeying.

 A. Yes.
 - Q. And how much time is spent carting materials and/or equipment from this job site to another job site?

 A. Right.
 - Q. Now, are you familiar with how much time is spent in this way?

 A. Yes.
 - Q. And who is doing his jockeying and this carting? A. Well, on some occasions, when it called for a large truck, like a ton and a half ton truck, there would be a rented truck by J. R. Stevenson.

On other occasions when the quantities were small, there was a laborer that was moving the material for J. R. Stevenson, a J. R. Stevenson laborer.

- Q. When you say a truck rented for J. R. Stevenson, you mean they go to an outside carting firm?

 A. I don't know. But it is a rented truck.
 - Q. Does the driver come with the truck? A. Yes.
 - Q. It is not one of your employees? A. Not that I know of.
- Q. Now, how much time is spent by this laborer on an average per week in jocketing from one spot on the site to another? A. Well, my closest guess would be between one and two hours a week.
 - Q. And during the period when did you come on the job?
- A. Approximately three and a half months ago.
 - Q. Which would make it what?

HEARING OFFICER: July.

A. Somewhere in July.

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- Q. Since you came on the job in July, until today, compressing all this time of Jockeying, can you tell us how much it would be? A. It would be 20, 25 hours.
 - O. 20 or 25 hours.

Now, when this outside rented trucking firm came on the job, do you

know whether Mr. Korchma checked the driver to see if he had a union card?

A. I don't know.

- Q. Did Mr. Korchma ever raise a problem that he did not have a union card?A. Not to me.
- Q. There has been some testimony that in fact he did have a unioncard.

But you don't know? A. I don't know. I have no occasion to check it as long as the loads are in smoothly.

Q. Now, there has been testimony here that the laborer's truck is used two to three days a week, sometimes half a day, sometimes less.

Is it possible you are in error, or are you sure about your answer as to how much it is being used?

A. I'm sure, because there isn't that much material for us to move.

- Q. Now, what does Mr. Korchma do all day? A. Well, he is usually in his trailer, from what I've been able to observe, he resides in his trailer. That's where he stays.
 - Q. You say he is usually in his trailer. A. Yes.
 - Q. Now, did you consider him under your supervision? A. No.
 - Q. To direct him. Did you ever tell him stop goofing off?
- A. No, I had no reason to. No.
- Q. You weren't even sure he was employed by Stevenson? A. That's right.
 - Q. And you are the project manager? A. Yes.
- Q. You are top banana on the job? A. That's right.
 - Q. Now, does Stevenson have any interest in or do you have any concern as project manager whether a truck that comes on the job is driven by a Teamster member or a non-union driver? A. Only if it raises a problem where the delivery can't be made. Outside of that, I have no interest at all.

- Q. If the delivery is made? A. I could care less.
- Q. What kind of problem that the delivery couldn't be made?

A. Well, in that one instance since I have been on the job with Flush Meadow, that was the one instance where the delivery couldn't be made and the driver from Flush Meadow contacted me and asked if I could intercede and do something to have the delivery dropped off.

- Q. Now, did this driver speak to you? A. Yes.
- Q. And what did he tell you?

MR. SHEEHAN: I object to it.

HEARING OFFICER: Probably hearsay, is that what you are saying?

MR. SHEEHAN: Yes.

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MR. GOLOVENSKY: If your Honor please, the question is as to what this employee does for us, if anything.

JUDGE SEFF: He has given testimony on that.

MR. GOLOVENSKY: Yes, but this is a very crucial question as to then whether this employee stops trucks, what his function is. He has testified, your Honor, I don't know how credibly. He testified that just does it because he is interested in and he has been doing it for 40 years.

JUDGE SEFF: 42 years.

MR. TRUNKES: And that he has never stopped deliveries and always allowed them to come in. And now we are hearing something to the contrary.

JUDGE SEFF: On reflection, I will permit him to answer the question.

BY MR. GOLOVENSKY

- Q. What's the name of the firm again? A. Flush Meadows Corporation.
 - Q. What did this driver from Flush Meadow Corporation tell you?
- A. He told me that the Teamster downstairs was preventing him from making a delivery because he did not have a Teamster card.
 - Q. What does "downstairs" mean? A. The ground floor.

Q. I see.

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- And where were you at the time? A. I was up on the third floor.

 In my office.
 - Q. The building is sufficiently constructed so you have an office in the building?A. Yes, sir.
 - Q. And he asked you, did he ask you to intercede, I believe you stated?

 A. Yes.
 - Q. And did you in fact? A. Yes, I did.
 - Q. And who did you talk to? A. I talked to the Teamster representative, all over there, and I talked to the driver, and I tried to mediate the problem so that we could have a delivery.

Al insisted that the delivery could not be made. And in the past, deliveries were made by Flush Meadow. But he had just, out of good graces let the deliveries go and he wasn't going to let any more deliveries go back.

- Q. For the record, Al is who? A. The Teamsters on the job, Mr. Korchma.
 - Q. Mr. Korchma in the red sweater? A. Yes.
- Q. And the driver, did Mr. Korchma deny that he wasn't going to let this delivery be made? A. Mr. Korchma insisted that the delivery could not be made or else he would do something about it. I don't know what he inferred but that's what he said.
 - O. You didn't want to find out? A. No, I didn't.
- Q. Now, what did you do to mediate this? A. I called my office and spoke to Mr. Galgano and told him the problem. That's what I did.
- Q. And what were you instructed, if anything? A. Well, Mr. Galgano was familiar with what was done in the past and in the past we had given a check to the Teamster driver from Flush Meadows. In other words, Flush Meadows would give him a check.

The last - the delivery before this, we had a delivery this morning, the

delivery before this, he did not accept the check. So Mr. Galgano suggested the only way to make the delivery was to accept the check from Flush Meadows into our account and then to make out a check from our account for the Teamster and that's what we did.

- Q. In the past there had been money paid into the Teamster Fund each time there was a delivery made by Flush Meadow?

 A. Well, in the past I wasn't there in the previous deliveries. In the past the deliveries were made by a direct payment to the Teamster from Flush Meadow.
- Q. And do you know how this delivery was made, to whom?A. To Al.
 - Q. To Mr. Korchma? A. Yes.

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- Q. And he was paid with a check? A. Yes.
- Q. Now, after you hung up with Mr. Galgano, did you speak toMr. Korchma?A. Yes.
 - Q. And did you relay this plan? A. Yes.
 - Q. And did that meet with his approval? A. Yes.
- Q. What did he do? Did he say anything? A. He said, I want the check I want the check to come through J.R. Stevenson Corporation and I said, well, that's already been cleared and then the delivery was allowed to be unloaded.
 - Q. Who allowed it? A. Mr. Korchma allowed it.
- Q. Was this suggestion with respect to the check going through J.R. Stevenson, was that made to Mr. Galgano to you on the phone or by Mr. Korchma to you before you got on the phone?

 A. It was made by Mr.

Korchma to me and I suggested it to Mr. Galgano and Mr. Galgano upheld the fact that was the best way to do it.

- Q. Is Mr. Galgano your superior? A. Mr. Galgano is a general manager for J.R. Stevenson and he is my superior as general manager, yes.
 - Q. So you cleared that Korchma suggestion with him? A. Yes,

definitely.

- Q. And you relayed it to Mr. Korchma? A. Yes.
- Q. And was the delivery made? A. Yes, s.r.

MR. GOLOVENSKY: I have no further questions, your Honor, at this time.

JUDGE SEFF: Mr. Sheehan?

CROSS-EXAMINATION

BY MR. SHEEHAN:

- Q. Mr. Bostick, the man who broke you in on the job was a party by the name of Nello Biordi? A. Yes, sir.
- Q. Did he at any time or any occasion speak to you about his plan or desires to get a truck for the job site?

 A. No, sir.
- Q. He testified here as a witness that he had made such recommendations to get such a truck.

 A. No, sir, not to me, because do you want me to
 - Q. Yes or no. A. No.
 - Q. Didn't tell you? A. No.
 - Q. He had been the project manager? A. That's right, sir.
- Q. For a period of some fifteen months on the job site? A. I believe so, yes.
- Q. And it was sometime in the month of July that he testified he made such a recommendation.

What's the truck used for on the job site? A. When we do have a truck that comes in, it's used for transferring what material we have left on this job to other jobs.

Q. I see.

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And is that a constant matter that goes on in the construction industry, where you transport equipment or material from one job site to another?

A. Well, it's sporadic. It does happen but it is sporadic. It may be whenever

another job needs a piece of material.

- Q. And you had other jobs going in Westchester County in the last three years months, rather? A. We have I understand one job going in Westchester County.
- 368 Q. Is that in Grasslands? A. Yes, sir.
 - Q. And do you have a job starting up in Purchase? A. I hear we do, yes, sir.

MR. GOLOVENSKY: Your Honor, if I may interject and insert in the record, we don't have that job in Purchase.

MR. SHEEHAN: I thought it was -

MR. GOLOVENSKY: It was bandied around but we don't have that job, not yet.

BY MR. SHEEHAN:

- Q. Is that truck something that would be used to move equipment within the perimeters of a job site as well as one job site to another?

 A. No, we don't use it to move material within the perimeter of the job site.
 - Q. You don't use the truck for that purpose? A. No.
- Q. What do you use for that purpose? A. Usually if a small piece of equipment is needed somewhere else, that truck would be used to get that equipment to another job site.
- Q. But how would you move material, such as cinder blocks or planks, plumbing, or other building equipment on the job site, from one place to another?

 A. We have, I understand, one power buggy and we have a machine, a gasoline machine called a loader, a small loader.
 - Q. Didn't you use this laborer's pickup truck for that purpose?
- A. No. You know, you really can't on this job.
 - Q. Didn't you use it for that purpose? A. The pickup truck?
 - Q. To move material from one place to another on the job site.
- A. Not that I know of, sir.

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- Q. Did you testify here to that effect? A. Yes, I already told you we didn't use it.
- Q. I thought you testified in answer to your counsel's questions that you did?

 A. We use it to use material off the job site whenever it's a small piece of equipment that would be handled by the pickup truck.
 - Q. And this was done by a laborer? A. Yes, sir.
- Q. Now, were you told when you became, as you have been described as top banana, that you had a contract with Local 456?

 A. No.
 - Q. What? A. No.
- Q. Did it ever come to your attention? A. No, sir.
 - Q. So that at no time were you ever advised by your employer of the fact that it had a contract in existence?

 A. No, sir. I had no question to ask.
 - Q. I didn't ask whether you asked. Were you ever informed?
 - A. No. sir.
 - Q. Did Mr. Biordi ever tell you that? A. No.
 - Q. Did he ever tell you if he had to get a truck that because of some information which he had picked up which occurred allegedly about a year and a half ago, that he would have to get another driver to operate that truck?
 - A. No.
 - Q. Mr. Biordi gave you no information with respect to that at all?
 - A. No.
 - Q. Did you ever ask Mr. Korchma whether that is true, that he had to get, that you have to get another driver if you got a truck?

MR. GOLOVENSKY: Your Honor, he just testified he never heard it.

JUDGE SEFF: That's correct. You are asking an unnecessary question.

- 371 BY MR. SHEEHAN:
 - Q. So I take it, then, you were fully informed that by your employer as to the contracts your employer had with various labor organizations, is that

correct? A. Well, I was told in general we have contracts with every — in general, every local on the — in Westchester County. No specific reference made to a Teamster's contract, a Local 456, whatever you —

Q. Do you check the time cards or the time records made by your timekeepr?

A. No, I don't.

Q. Don't you have to certify them to your home office? A. Well, I really —

Q. I don't hear you. A. I really leave that up to the timekeeper.

Q. You don't supervise any of the entries he makes in the time records?

A. I briefly check them over but I don't go over the detail.

Q. Do you check as to the names that appear on it? A. No.

Q. What do you check them for? A. Whenever there is a problem as to whether the money is incorrect or something like that. If the time is incorrect, then I will get into it.

Q. Do you certify the time records of your timekeeper? A. Certify to what degree, sir.

Q. To any degree.

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MR. GOLOVENSKY: I think, your Honor, the question is ambiguous, certify.

Do you mean sign on it?

Q. Do you certify to your home office that these time records are according to your — in your position as project manager, proper and adequate?

A. Only when there is a dispute as to time, sir.

Q. Do you make any initial in the time - A. No, no.

Q. So then do I understand, then, that the bookkeeper or whoever prepares the payroll does not have any authorization from you to honor the time cards or the time amounts as contained in the timekeeper's reports?

A. He has also full authorization from me.

Q. So it is just merely the timekeeper? A. Pardon?

- Q. It's just merely the timekeeper's figures that count? A. No. He has full authorization for every man on the job to see he is paid.
- Q. Do you after he has prepared these time cards and time records okay that in any way?

 A. No, I don't check over all the records.
 - Q. I didn't ask you if you checked over all the records. I am merely ask you if you okay the time reports prepared by the timekeeper for payroll purposes? A. Yes, I
 - Q. And you've done that each and every week?

 A. No, I haven't done it each and every week.

JUDGE SEFF: Can a man receive his pay without any written authorization from you?

THE WITNESS: Yes, sir.

BY MR. SHEEHAN:

- Q. Did you see Korchma's name on that time report each and every week that you've been there for three and a half months?

 A. Yes, I did. Yes.
- Q. So it's not a stranger to you, is it? A. No, he is not a stranger to me.
- Q. So you know he was an employee of J.R. Stevenson? A. Well, I wasn't sure. But now I'm pretty sure he was an employee of J.R. Stevenson?
- Q. And you know that right from the very beginning? A. No. If I would I would have said so.

MR. SHEEHAN: No further questions.

MR. GOLOVENSKY: No further questions.

374 MR. TRUNKES: No further questions.

JUDGE SEFF: Hearing no further questions, you are excused. Thank you for your testimony.

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VINCENT T. JOVENE:

recalled_as a witness, having been previously duly sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. TRUNKES:

Q. Mr. Jovene, you may recall yesterday when asked when did Mr. Toran first become hired by Stevenson, and you stated September 1971, is that right?

A. Yes.

376 BY MR. TRUNKES:

- Q. All right. A. I received the dates when I called the office from clerical people. And looking at the records -
 - Q. Hold on.

After that you heard Mr. Toran testify that he started in May of 1970, did you not?

A. Yes.

- Q. And records were introduced to that effect, weren't they?
- A. Yes.
 - Q. As a result, did you obtain records from your office today?
- A. Yes.
 - Q. They were brought to you the last few minutes? A. Yes.
 - Q. Did you check the records? A. Yes.
- Q. And what do the records show as far as Mr. Toran? A. Mr. Toran started in May of 1970.
 - Q. He was correct in his testimony as to the date of starting?
- 377 A. Yes.
 - Q. Mr. Knesich got on and there was also confusion as to when he started on the job.

Did you bring records to indicate when he started? A. Yes, the records indicate he started September of 1970.

Q. Of 1970.

MR. TRUNKES: Okay.

DIRECT EXAMINATION

BY MR. GOLOVENSKY:

Q. These are records you actually have here today and looked at?
 A. Yes.

Q. Company records? A. Yes. These are the actual company records.

MR. GOLOVENSKY: Thank you.

MR. TRUNKES: That's all, your Honor.

MR. SHEEHAN: No questions.

JUDGE SEFF: You rest?

MR. TRUNKES: End of rebuttal.

JUDGE SEFF: End of re-rebuttal. Case closed.